

CHELAN CITY COUNCIL
AGENDA

1. CALL TO ORDER
2. ROLL CALL
Cooney__McCardle__Allen__Isenhardt__Dobbs__Harper__Morehouse__Steele__
3. AGENDA CHANGES
4. CITIZEN COMMENTS
Items not on the agenda. Time limited per the Mayor.
5. MINUTES
 - A. Approve Minutes of the April 12, 2016 Regular City Council Meeting (Gallucci) 3 - 7
[April 12, 2016 Draft Minutes](#)
 - B. Approve Minutes of the April 19, 2016 Special City Council Work Session (Gallucci) 8
[April 19, 2016 Draft Minutes](#)
6. CONSENT AGENDA
 - A. April 26, 2016 Claim & Payroll Warrants Approval
7. SPECIAL PRESENTATIONS
 - A. Watershed Presentation by Mike Kaputa (Van Epps) 9
[Agenda Bill No. 2016-006B](#)
8. PUBLIC HEARINGS
 - A. None
9. ORDINANCES, RESOLUTIONS, OTHER ITEMS
 - A. Lake Chelan Leasing Company Agreement Addendum (Sargeant) 10 - 13
[Agenda Bill No. 03-073J](#)
[Agreement Addendum](#)
 - B. Lake Chelan Sailing Association Agreement (Sargeant) 14 - 24
[Agenda Bill No. 05-15J](#)
[Proposed Agreement](#)
 - C. Mosaic Planning Professional Services Agreement (Gildroy) 25 - 32
[Agenda Bill No. 2010-012F](#)
[Proposed Agreement](#)
 - D. Lookout Winery District Planned Development Adopting Ordinance (Gildroy) 33 - 91
[Agenda Bill No. 2016-013A](#)
[Proposed Ordinance No. 2016-1508](#)
[City Attorney Memo](#)
10. MAYOR AND COUNCIL COMMENTS
11. CITY ADMINISTRATOR'S REPORT

12. RECESS - AIRPORT BOARD MEETING

92 - 93

[Airport Board Agenda](#)
[April 12, 2016 Draft Minutes](#)

13. EXECUTIVE SESSION

14. ADJOURNMENT

**"The greater danger for most of us lies not in setting our aim too high and falling short,
but in setting our aim too low and achieving our mark."
Michelangelo**

MINUTES OF THE APRIL 12, 2016 COUNCIL MEETING
City Hall, 135 East Johnson Avenue, Chelan, Washington

1. CALL TO ORDER

The meeting was called to order at 6:00 p.m.

2. ELECTED OFFICIALS PRESENT: Mayor Cooney, Councilmembers Allen, Dobbs, Harper, Isenhart, McCardle, Morehouse and Steele.

STAFF PRESENT: City Administrator Schmidt, City Attorney Batjer, City Attorney Galbraith, City Clerk Gallucci, Planning Director Gildroy, Parks, Recreation & Community Services Director Sargeant, Associate Planner Ajax, and Development Project Manager Reynolds.

3. AGENDA CHANGES

- A. Added Personnel Policy Amendment Resolution

4. CITIZEN COMMENTS

- A. Rich Thompson, 220 Trow, voiced various concerns regarding vacation rentals. He distributed pictures, discussed parking issues, and the problems he has encountered with the vacation rental next to his home. He doesn't want them banned as he thinks it serves a good niche but he thinks they need to be regulated. He named several cities with vacation rental regulations and asked Council to consider following some of those cities requirements.
- b. Leah Thompson, 220 Trow, reiterated Mr. Thompson's concerns and discussed the noise, strip teases, and fights she has witnessed. It makes Mr. Thompson mad but it is frightening for her.

5. MINUTES

Ms. McCardle moved to approve the minutes as follows. Second by Ms. Isenhart. Motion passed unanimously.

- A. Minutes of the March 10, 2016 Regular City Council Meeting
B. Minutes of the March 24, 2016 Regular City Council Meeting

6. CONSENT AGENDA

Mr. Steele moved to approve the consent agenda follows. Second by Mr. Morehouse. Motion passed unanimously.

- A. April 12, 2016 Claim Warrants No. 86659 - 86743 totaling \$195,499.368 and Payroll Warrants No. 47581 – 47667 totaling \$223,185.49 and incorporating the following note:
A/P batch on 3/24/16 was approved as \$432,047.48 but did not include warrant No. 86658 for \$25.00 that had to be dated 3/25/16 to the Department of Retirement to create two

warrants for this vendor as they needed to be mailed separately. Actual A/P total for 3/24/16 was \$432,072.48

- B. Earth Day Proclamation
- C. Arbor Day Proclamation
- D. Sidewalk Business License Revision Adopting Ordinance No. 2016-1510
- E.417 S Bradley Property Sales Proceeds Transfer to Fund 301

7. SPECIAL PRESENTATIONS

- A. ANNUAL RECYCLING REPORT: Mr. Beaton presented the Annual Recycling Report. He discussed launching the metal drive, litter clean up, his accomplishments and things he's proud of including his recycle report on KOZI. He thanked the City for his job and said it has been great. He also thanked everyone in the audience.

No action required.

PERSONNEL POLICY AMENDMENT RESOLUTION: Mr. Schmidt explained this item was to allow employees who have 2000 sick hours at the time of separation from the City can receive 240 hours of sick time cash out into their VEBA account.

Ms. McCardle moved to approve Resolution No. 2016-1318. Second by Ms. Isenhart. Motion passed unanimously.

8. PUBLIC HEARINGS

- A. DIETRICH ANNEXATION: Mr. Gildroy reviewed the annexation materials and conditions. The public hearing was opened at 6:41 p.m. and was closed at 6:45 p.m. There was no public comment,

Ms. Allen moved to authorize the Mayor to sign the Ordinance No. 2016-1510 annexing certain real property and establishing the effective date of Dietrich annexation subject to Chelan County Assessor's certification of 60% petition signatures, and to sign the Dietrich annexation agreement. Second by Mr. Steele. Motion passed unanimously.

9. ORDINANCES, RESOLUTIONS, AND OTHER ITEMS

- A. BUSEY ANNEXATION PETITIONER MEETING: Mr. Gildroy informed Council the City had received a request from Jim and Rebecca Busey for City Council to begin direct annexation. No other neighbors want to be annexed in at this time. Council can accept, reject or modify the petition. It is staff's recommendation to take in the one parcel in Lord Acres.

Ms. Isenhart moved that the direct annexation petition by Jim and Rebecca Busey be accepted as proposed. The annexation area is required to assume its share of the City's indebtedness and the zoning shall be in accordance with the pre-annexation zoning of Special Use District. Second by Mr. Steele. Motion passed unanimously.

B. **RATE & FEE RESOLUTION AMENDMENT:** Mr. Gildroy stated Council they had modified code enforcement provisions at a previous Council meeting and now needed to establish fees for violations.

Ms. McCardle moved to approve Resolution No. 2016-1316. Second by Mr. Dobbs. Motion passed unanimously.

C. **LAKESHORE RV PARK IRRIGATION AND ELECTRICAL IMPROVEMENTS AGREEMENT:** Mr. Schmidt stated this agenda item was seeking authorization to enter into a Professional Services Agreement with SCJ Alliance to determine what is necessary for upgrades to the Lakeshore RV Park irrigation system and electrical system.

Mr. Morehouse moved to authorize the Mayor to enter into the Professional Services Agreement with SCJ Alliance for the Lakeshore RV Park Irrigation and Electrical Improvements project. Second by Ms. Isenhart. Motion passed unanimously.

D. **LAKE CHELAN AIRPORT RUNWAY RESOTRATION PROJECT:** Mr. Schmidt said the City needed to guarantee matching funds availability for the Lake Chelan Airport Runway and Taxiway Crack Seal and Resurface project. The project will be funded by a \$225,000 grant from the FAA, approximately a \$12,000 grant from WSDOT, and approximately a \$12,000 match from the City.

Mr. Morehouse moved to approve Resolution No. 2016-1317. Second by Mr. Harper. Motion passed unanimously.

E. **CITY COUNCIL GOAL ATTAINMENT STATEMENT RESOLUTION:** Mr. Schmidt asked if there were any changes to the draft resolution which was brought to the March 24, 2016 Council meeting. There were none and there was no discussion.

Ms. McCardle moved to approve Resolution No. 2016-1314. Second by Ms. Allen. Motion passed unanimously.

F. **PARKS ADMINISTRATION BUILDING BID AWARD:** Mr. Schmidt stated the Council ad hoc committee had met and they recommend awarding the bid to Hale and Long.

Ms. McCardle moved to award the bid to Hale and Long in the amount of \$533,000 plus any appropriate sales tax, any alternative addendums listed in the bid documents to be selected by the Mayor, and any change orders up to 5% of the project total. Second by Steele. Motion passed unanimously.

10. MAYOR AND COUNCIL COMMENTS

Ms. Allen

- It is great working with city staff. They are so friendly and accommodating. She really enjoys it.

Mr. Dobbs

- Passed.

Mr. Harper

- Passed.

Ms. Isenhardt

- Went to Summerland and met with the TOTA Board for the Route 97. They are excited Chelan invested in the Route 97 which goes from Weed, CA to the Alcan Highway in Alaska. They would like to come down to Chelan.

Ms. McCardle

- Thanked everyone on Council who has participated in the Parks Administration Building process. Nice to know it was looked at in several different ways and the outcome was the same.

Mr. Morehouse

- Passed.

Mr. Steele

- Passed.

Mr. Cooney

- The parks administration building should start being built in roughly three weeks.
- Visited with Rio Tinto and he gave an overview of their cleanup efforts. Rio Tinto will stay on until October. They have accomplished a lot up there.
- Has been in discussion with the Department of Ecology to eradicate brush in the City. There has been no resolution yet but he's keeping his fingers crossed.

11. CITY ADMINISTRATOR'S REPORT

- Next Tuesday, April 19, 2016 is the first Council work session
- AWC is having a Small City Connector meeting in Oroville on May 9, 2016. Let Ms. Gallucci know if you want to go and we will get you registered.
- The May 17, 2016 Council work session will be with the Chamber of Commerce.
- The AWC Annual Conference will be held June 21 – June 24 in Everett.

STAFF REPORTS

Mr. Gildroy

- There is a vacancy in the Planning Department because Associate Planner John Ajax is leaving.

Mr. Van Epps

- Is working on filling four spots. He has gone through the interview process and he is hoping to firm up who he is hiring and report more next Tuesday.
- Acknowledged Martha Williams for the FEMA reimbursement to cover some of the damages the City had sustained from the fires last summer. She did the lion's share of the work and jumped through the hoops. She did a great job.

Ms. Sargeant

- Thanked Council for their support for the new Parks Administration Building. It really means a lot to her.

12. RECESS

The City Council meeting was recessed at 7:24 p.m. to allow the Mayor and Councilmembers to participate in the Airport Board Meeting. The Council meeting reconvened at 7:25 p.m. following adjournment of the Airport Board Meeting.

13. EXECUTIVE SESSION

A. At 7:25 p.m. Mr. Cooney stated there would be an Executive Session regarding Matters of Potential Litigation (RCW 42.30.110(1)(i)) lasting ten minutes with no action to be taken. The Executive Session began at 7:27 p.m. At 7:37 p.m. the Executive Session adjourned and the regular meeting reconvened.

14. ADJOURNMENT

There being no further business, the meeting was adjourned at 7:37 p.m.

DATE APPROVED BY COUNCIL:

Peri Gallucci City Clerk	Michael Cooney Mayor

MINUTES OF THE APRIL 19, 2016 CITY COUNCIL WORK SESSION
City Hall, 135 East Johnson Avenue, Chelan, Washington

1. CALL TO ORDER

The meeting was called to order at 4:00 p.m.

2. ELECTED OFFICIALS PRESENT: Mayor Cooney, Councilmembers Allen, Dobbs, Isenhart, McCardle, Morehouse, and Steele.

STAFF PRESENT: City Administrator Schmidt, City Attorney Batjer, City Clerk/Administrative Assistant Gallucci, Finance Director Grant, Planning Director Gildroy, Parks, Recreation and Community Services Director Sargeant, and Public Works Director Van Epps.

3. WORK SESSION DISCUSSION: Councilmembers and staff discussed various upcoming City Council agenda items including:

1. \$2,000 Capital Item Limit
2. Budget Amendments
3. Rate Resolution – Water Rate Changes
4. TIF/Future Annexation
5. Personnel Backfill
6. Triage

4. ADJOURNMENT

The work session was adjourned at 5:42 p.m.

DATE APPROVED BY COUNCIL:

Peri Gallucci
City Clerk

Michael Cooney
Mayor

AGENDA BILL NO. 2016-006B

BUSINESS OF THE CITY COUNCIL
CHELAN, WASHINGTON

SUBJECT: Watershed Presentation by Mike
Kaputa

EXHIBITS
1. None

FOR AGENDA OF: April 26, 2016

ORIGINATOR: Dwane Van Epps
Public Works Director

APPROVED: 
City Administrator

Reviewed by Attorney: No

EXPENDITURE REQUIRED:	AMOUNT BUDGETED:	APPROPRIATION REQUIRED:	FINANCE DIRECTOR:
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AUTHORITY: RCW 35A.11.020 Powers vested in legislative bodies of noncharter and charter code cities. "...The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title..."

***** SUMMARY STATEMENT/ISSUES *****

Mike Kaputa, Director of Chelan County Natural Resource Department, will give a presentation regarding water quality issues in the Lake Chelan Basin and water rights acquisition.

Public Hearing

Legislative Matter

Other: Presentation

Suggested Motion:
No action required.

AGENDA BILL NO. 03-073J

BUSINESS OF THE CITY COUNCIL
CHELAN, WASHINGTON

SUBJECT: Lake Chelan Leasing Company
Shoreline Watercraft Concession
Agreement Addendum

EXHIBITS

1. Proposed Concession Agreement
Addendum

FOR AGENDA OF: April 26, 2016

ORIGINATOR: Karen Sargeant
Parks, Recreation & Community
Services Director

APPROVED: 
City Administrator

Reviewed by Attorney: Yes

EXPENDITURE REQUIRED:	AMOUNT BUDGETED:	APPROPRIATION REQUIRED:	FINANCE DIRECTOR:
AUTHORITY: RCW 35A.11.010 Rights, powers, and privileges. "Each city governed under this optional municipal code...and, by and through its legislative body, such municipality may contract and be contracted with..."			

***** SUMMARY STATEMENT/ISSUES *****

The Parks Staff requests action by the City Council to approve an addendum to the concession agreement with Lake Chelan Leasing Company, a LLC business doing business as Shoreline Watercraft and Boat Renting Service (The Concessionaire). The Concessionaire desires to expand the Concession Premises to include twenty (20) feet of additional dock footage, as depicted on Exhibit "A" to this Addendum (the "Additional Concession Premises") The Concession Fee for the additional Concession Premises is \$1,000.00 annually. In addition, the Concessionaire will pay the current State Leasehold Excise Tax of 12.84%.

Public Hearing

Legislative Matter

Other: _____

Suggested Motion:

I move to authorize the Mayor to enter into the Shoreline Watercraft Concession Agreement Addendum with Lake Chelan Leasing Company for 2016-2018 as attached and presented.

ADDENDUM TO SEASONAL CONCESSION AGREEMENT

THIS ADDENDUM (the "Addendum") is made between the CITY OF CHELAN, a municipal corporation of the State of Washington (the "City"), LAKE CHELAN LEASING COMPANY, a Washington limited liability company doing business as RSI Sports (the "Concessionaire") and STACY BYQUIST (the "Guarantor")

WHEREAS the parties entered into that Seasonal Concession Agreement relating to the grant of a Concession and the use of Concession Premises for the Season beginning May 13, 2016 and ending October 1, 2018 generally described as approximately three hundred (300) square feet, located at 319 W. Manson Highway, Chelan, Washington, and referred to as the Marina Concession Docks;

WHEREAS the Concessionaire desires to expand the Concession Premises to include twenty (20) feet of additional dock footage, and depicted on Exhibit "A" to this Addendum (the "Additional Concession Premises"); Days of use – three (3) days of Memorial Weekend and July 1 through Labor Day.

1. Expanded Concession Premises. The Concession Premises shall include the Concession Premises described in the Seasonal Concession Agreement, together with the Additional Concession Premises.

2. Fees.

2.1 Concession Fee. The Concession Fee for the Additional Concession Premises is \$1,000.00 annually.

2.2 Leasehold Excise Tax. The annual Leasehold Excise Tax is One Hundred Twenty Eight dollars and Sixty cents (\$128.60), which is the current leasehold excise tax rate of 12.84% on that portion of the Concession Fee constituting the reasonable value for the use of the Additional Concession Premises. This apportionment shall be subject to review and revision as may be required by the Washington State Department of Revenue in order to assure that the apportionment reflects the reasonable rental value of the Concession Premises. Concessionaire specifically acknowledges and agrees to pay any additional sums which may be required as a result of said reapportionment.

2.3 Payment. The Concessionaire shall pay the Concession Fee and the Leasehold Excise Tax detailed in Paragraphs 2.1 and 2.2 pursuant to the ordinary payment schedule in the Seasonal Concession Agreement.

In addition to other remedies available at law and equity, the Concessionaire shall pay a late charge in the amount of One Hundred Dollars (\$100) as liquidated damages for the failure to pay any portion of the Concession Fee and the Leasehold Excise Tax when due.

3. Statement of Agreement. The Agreement between the parties relating to the Concession and the use of the Concession Premises and the Additional Concession Premises is set out

in the Seasonal Concession Agreement and this Addendum. In the event any provision of the Seasonal Concession Agreement and this Addendum conflict, the provisions of this Addendum shall govern.

CONCESSIONAIRE

CITY OF CHELAN

LAKE CHELAN LEASING COMPANY, LLC
dba RSI Sports

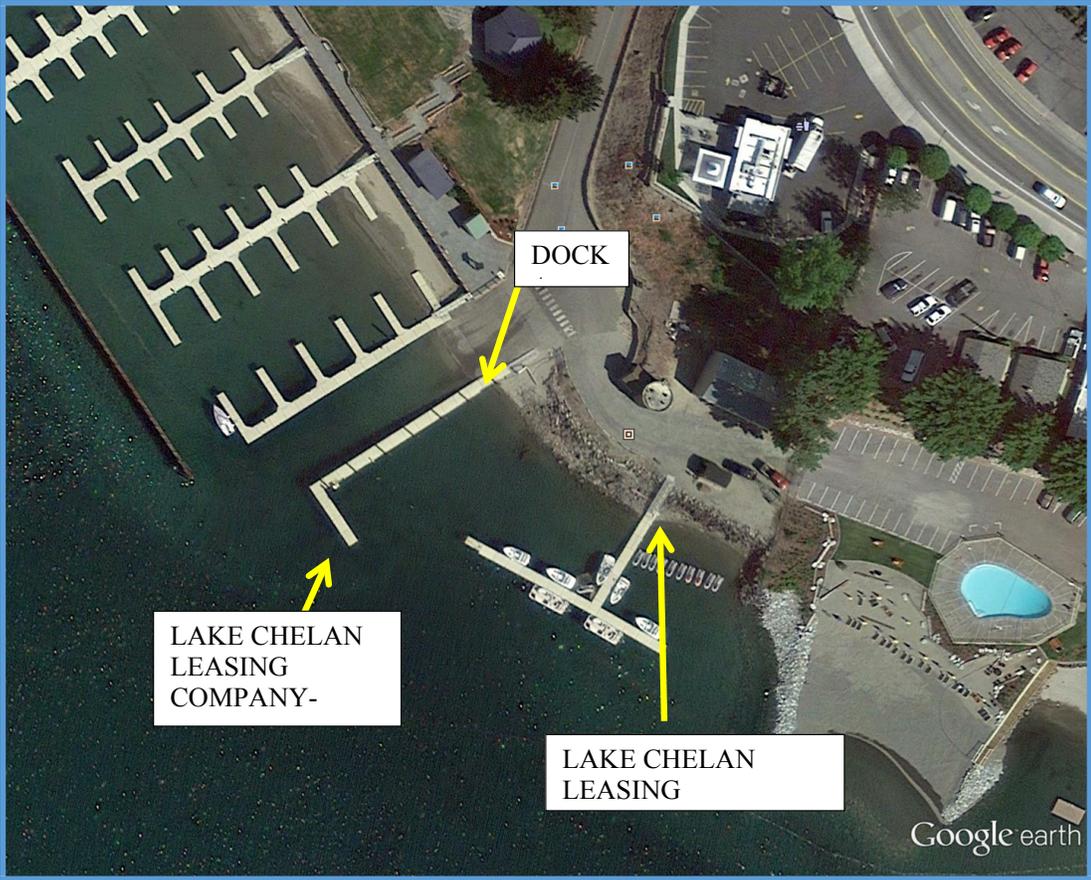
By: _____
Stacy Byquist, Member

By: _____
Mike Cooney, Mayor

GUARANTOR:

Stacy Byquist

EXHIBIT A



AGENDA BILL NO. 05-015J

BUSINESS OF THE CITY COUNCIL
CHELAN, WASHINGTON

SUBJECT: Lake Chelan Sailing Association
Facilities Use Agreement

FOR AGENDA OF: April 26, 2016

ORIGINATOR: Karen Sargeant
Parks, Recreation & Community
Services Director

APPROVED: Yes
City Administrator

Reviewed by Attorney: Yes

EXHIBITS
1. Proposed Facilities Use Agreement

EXPENDITURE AMOUNT APPROPRIATION FINANCE
REQUIRED: BUDGETED: REQUIRED: DIRECTOR:

AUTHORITY: RCW 35A.11.010 Rights, powers, and privileges. "Each city governed under this optional municipal code...and, by and through its legislative body, such municipality may contract and be contracted with..."

***** SUMMARY STATEMENT/ISSUES *****

Parks staff requests an action by the City Council to approve the Marina Facilities Agreement with the Lake Chelan Sailing Association (LCSA) for 2016-2018 and authorize the Mayor to enter into the 2016 - 2018 agreement. The new agreement is essentially the same with one exception. The City has reduced the amount of LCSA storage space in the hanger building. For this agreement, only 750 square feet of storage for boats, and miscellaneous equipment in the hanger facility adjacent to the Lakeshore Marina, (See Exhibit A) will be allocated to the Sailing Association. In exchange for the storage and moorage, the LCSA agrees to provide free sailing lessons to citizens of Washington State during the months of May and June. The LCSA will maintain the moorage and storage area inside and out in a safe, organized manner, free of debris and general deposits associated with shoreline drift. Furthermore, the LCSA through it volunteer efforts will assist in developing and improving the boat storage area adjacent to the hanger and will work directly with staff to coordinate efforts to reduce the LCSA impact on other areas of the marina.

Public Hearing Legislative Matter Other: _____

Suggested Motion:

I move to authorize the Mayor to enter into the Facilities Use Agreement with the Lake Chelan Sailing Association for 2016-2018 as attached and presented.

CONCESSION AGREEMENT

2016 - 2018

THIS CONCESSION AGREEMENT (the "Agreement") is made between the City of Chelan, a municipal corporation of the State of Washington (the "City") and the Lake Chelan Sailing Association, a Washington nonprofit corporation (the "Sailing Association" or the "Concessionaire"), both of whom may sometimes be collectively referred to as the "Parties".

1. Grant of Concession. The City grants to the Concessionaire, for the term and upon the conditions and provisions hereinafter specified, the non-exclusive right and privilege to use and conduct various docking, storage, and use of the below described Concession Premises for sailing activities on Lake Chelan (the "Concession"). These activities are to complement the City's properties and the City's efforts to promote tourism.

2. Concession Premises License.

2.1 Concession Premises. The City licenses to the Concessionaire, and Concessionaire licenses from the City, upon the terms and conditions included in this Agreement, the use of the City's municipal docks in the Lakeshore Marina near Don Morse Park, 485 West Manson highway, Chelan, WA 98816 (the "Concession Premises"). The Concession Premises will consist of a 40-foot portion of the City's "A" dock in the Marina for the moorage of its sailboats, together with a 750 square foot portion of the 1,500 square foot "hanger" building near the Marina Facilities (collectively referred to as the "Marina Facilities") as shown in **Exhibit "A"**, attached hereto and incorporated by reference. The City requires the Sailing Association to keep a 750 square foot area in the hangar (which has been marked) clear at all times for City purposes.

2.2 Use. Concessionaire may use the Concession Premises for the Concession. Concessionaire's use shall not be exclusive. Use of the Concessionaire Premises shall be subject to the use of the general public. Concessionaire shall not interfere with other City concessionaires or the public's use. A maximum of fifteen-minute parking will be allowed for loading and unloading of boats. Concessionaire shall not operate or conduct any other business activity at the Concession Premises unless specifically authorized to do so by the City, and shall not use or permit the use of the Concession Premises, for any activity which violates laws or regulations governing the Concession Premises or the Concession.

2.3 Acceptance/Improvements. Concessionaire accepts the Concession Premises in the condition existing at the commencement of the terms of this Agreement, and warrants it has inspected the Concession Premises, and confirms it is acceptable for the Concessionaire's use in the Concession. The Concessionaire further represents and warrants that no representation, statement or warranty, express or implied, has been made by or on behalf of the City as to the condition of the Concession Premises. The Concessionaire may make such improvements to the Concession Premises as are approved in writing in advance by the Director

of the Parks and Recreation Department (the "Parks and Recreation Director"). Any such approved improvements shall become the property of the City upon termination of this Agreement.

2.4 Utilities. The City shall be responsible for the costs of water, electrical and garbage services. Concessionaire shall be responsible for all other utility costs, including but not limited to telephone service.

2.5 Repair and Maintenance.

2.5.1 The Concessionaire shall, at its own expense, maintain the Concession Premises, together with any and all property and equipment installed by the Concessionaire and any exterior amenities associated with the Concession, in good condition and repair in accordance with all applicable zoning ordinances, restrictive covenants, and established appearance standards for the Park.

2.5.2 All maintenance, repairs, replacements to the Concession Premises shall be made promptly as and when necessary, time being of the essence. On default of the Concessionaire in making such repairs or replacements, the City may, at its option, make such maintenance, repairs and replacements on the Concessionaire's account, with the expense thereof to be immediately due and payable as an additional Concession Fee.

2.5.3 Concessionaire shall commit no waste on the Concession Premises.

2.5.4 Concessionaire will not be held responsible for normal wear and tear of the Concession Premises.

2.6 Right of Entry. The City may enter the Concession Premises at any reasonable time upon providing reasonable notice to Concessionaire for the purpose of inspecting the Concession Premises or performing any work which the City elects to undertake. The City and the Concessionaire will each have equal access to the facility by having each party install two differently keyed or combination padlocks chained together for security purposes.

2.7 City's Rights. If the Concession Premises shall be deserted or vacated; or if proceedings are commenced against the Concessionaire in any court under the Bankruptcy Code or for the appointment of a trustee or receiver of the Concessionaire's property, either before or after the commencement of the term of this Agreement; or if there shall be a default in payment according to the provisions of section 3 for more than ten (10) days after written notice of such default by City; or if there shall be a default in the performance of any other covenant, agreement, condition, rule or regulation contained or hereafter established on the part of the City for more than twenty (20) days after written notice of such default by the City, this Agreement (if the City so elects) shall thereupon become null and void and the City shall have the right to enter or repossess the Concession Premises, either by force, summary proceedings, surrender or otherwise, and dispossess and remove the Concessionaire from the Concession Premises without being liable for any prosecution therefore. Improvements placed on the Concession Premises

shall at the City's option become the property of the City if such default occurs. Otherwise, the City may remove the improvements and collect costs of removal from Concessionaire.

2.8 Damage or Destruction. If the Concession Premises are destroyed or damaged by fire or any other casualty, the City may, at the City's option, terminate this Agreement upon ten (10) days written notice to Concessionaire or restore the Concession Premises to the condition existing on the date of commencement of this Agreement, or make whatever improvements deemed necessary by the City to repair the damage.

2.9 Encumbrance of Concessionaire's Interest. Concessionaire may not encumber the Concession Premises or the Concession.

2.10 Presence and Use of Hazardous Substances. The Concessionaire shall not store or use hazardous substances at the Concession Premises. "Hazardous substances" shall include those substances designated as, or containing components designated as, hazardous, dangerous, toxic or harmful and/or which are subject to regulation by any federal, state or local law, regulation, statute or ordinance. For purposes of this Agreement, all fuels shall be considered hazardous substances.

2.11 Trade Fixtures. Concessionaire may not install on the Concession Premises any equipment or trade fixtures. Concessionaire may install and maintain such signage as is necessary and appropriate to reflect the Concessionaire Premises as a location for the Sailing Association and sailing activities. At the termination of this Agreement, at the direction of the City, Concessionaire shall remove from the Concession Premises all such signage. Any equipment, fixtures, or signage not removed by the Concessionaire at the termination of this agreement shall, at the City's option, become the City's property.

2.12 City Equipment. The City is providing only the Concession Premises as described in **Exhibit A**. The City is not providing additional equipment to the Concessionaire.

2.13 Surrender. Upon termination of this agreement for any reason, Concessionaire shall immediately surrender to the City possession of the Concession Premises in good condition and repair, subject only to normal wear and tear resulting from ordinary use of the Concession Premises by the Concessionaire during the term of this Agreement and prior Concession Agreements between the parties. Immediately prior to the termination of this Agreement, the parties shall jointly review the condition of the Concession Premises to determine the condition of the Concession Premises for purposes of determining whether the Concessionaire has complied with this requirement. If the Concessionaire fails to participate in the review of the condition of the Concession Premises upon reasonable notice thereto by the City, the determination of the Concession Premises by the City shall be final and conclusive. The Concessionaire shall pay any costs or expenses incurred by the City to regain possession of the Concession Premises where Concessionaire fails to comply with this provision, including reasonable attorneys' fees.

2.14 Periodic Accounting. To accurately assess the benefit to the City, the City requires an accounting of the use of the public's property. The Sailing Association shall provide

a summary report with an attached roster of sailing lessons provided at no charge to the public. The roster shall include dates, student names and lessons taken. Also in the summary report, the Sailing Association shall also provide an accounting for the number of times Sailing Association members utilize the facility for recreational activities not associated with lessons or maintenance with an attached log of dates and names. This summary report and subsequent logs shall be submitted the Parks and Recreation Department annually no later than October 1 of each Concession Agreement year. Further, the Sailing Association, shall through its officers, present to the Parks and Recreation Advisory Board and the City Council its past year accomplishments annually in October.

3. Fees.

3.1 Fees. In lieu of moorage fees, the Sailing Association shall provide free sailing lessons and water safety classes to Washington State residents who elect to sign up for the 6-week lessons. The Concessionaire shall pay to the City a Leasehold Excise Tax as set forth below.

3.2 Leasehold Excise Tax. The Leasehold Excise Tax is 12.84% of two (2) twenty foot slips as set by the Chelan County Council Fee Resolution, or the amount of \$ _____.

This apportionment shall be subject to review and revision from time to time as may be required by the Washington State Department of Revenue in order to assure that the apportionment reflects the reasonable rental value of the Concession Premises. Concessionaire specifically acknowledges and agrees to pay any additional sums which may be required as a result of said reapportionment.

3.4 Payment. The Concessionaire shall pay the Leasehold Excise Tax in one installment: AMOUNT due on or before August 31st of each year.

4. Term. The Term of the Concession and License shall be for three (3) seasons from 2016 through 2018. For purposes of this Agreement a "Season" begins on May 1st and shall end on September 30th of each year during the term of this Agreement. Either of the parties may terminate this Agreement with written notice on or before December 31 of any year prior to the commencement of the next Season. The Concessionaire may have access to the Concession Premises thirty (30) days prior to the beginning of a Season and thirty (30) days after the end of a Season.

5. Operation of the Concession.

5.1 Methods of Operation. Methods of business and prices charged shall be at the reasonable discretion of the Concessionaire. Provided, however, the Concessionaire shall operate the Concession in a first class, courteous and efficient. The City reserves the right to negotiate a modification in the Concessionaire's method of business to assure such method is consistent with the City's intent to provide quality service to the public.

5.2 Licenses, Permits and Taxes. Concessionaire shall obtain and pay for all permits and licenses (including a City business license) that may be required for the operation of the Concession and the Concession Premises and shall promptly pay all taxes resulting from the operation of the Concession.

5.3 Parking. Concessionaire and employees will pay for parking through the parking lot meters or through a parking permit.

5.4 Signs. Concessionaire shall not erect any sign on the Concession Premises or in the vicinity thereof without the advance written approval of the City, except as provided herein. The Concessionaire shall comply with the sign and advertisement standards established by the Parks and Recreation Director.

5.5 Recycling. The Concessionaire will be required to recycle aluminum, cardboard, glass (brown, clear and green), metal cans, paper, and plastic bottles. It is the responsibility of the Concessionaire to separate, break down and transport the recycled materials to the maintenance shed recycling area.

5.6 Schedule of Operation.

5.6.1 The Concessionaire shall conduct its business daily and will consistently, reasonably and properly meet the needs and demands for serving the public at the Park and as directed and/or approved by the Parks and Recreation Director.

5.6.2 The Concessionaire waives any claim against the City for any losses suffered or allegedly suffered due to the closure of the Park for any reason.

5.7 Supervisor. At all times during the operation of the Concession during the term of this Agreement there shall be present on the Concession Premises an agent of the Concessionaire having authority to make decisions regarding the operation of the Concession and to bind the Concessionaire.

5.8 Security of the Concession Premises. Concessionaire shall be responsible to secure all access to the Concession Premises when not in operation.

6 Breach/Remedies.

6.1 If, in the judgment of the Parks and Recreation Director, or his designee, the Concession's manner of operation or quality of service does not meet the requirements of this Agreement, or if Concessionaire is in default of any other term of this Agreement, City shall give Concessionaire a written notice specifying the particulars of the unsatisfactory performance.

6.2 If Concessionaire fails or refuses to remedy such unsatisfactory performance or default within ten (10) days after receipt of such notice, City may terminate this Agreement and take possession of the Concession Premises, it being recognized the use of the Concession Premises is a license, and not a lease. Notwithstanding, all remedies available at law

or equity are available to the parties.

6.3 The Concessionaire may appeal the decision of the Parks and Recreation Director to terminate this Agreement by petitioning the City Administrator on or before the expiration of the period described in section 6.2, whose decision will be binding and final and not subject to the Dispute Resolution Process set out in Section 9.

7. Hold Harmless and Indemnity.

7.1 Concessionaire shall indemnify, defend and hold the City, its officers, agents and employees, harmless from and against any and all claims, losses, liability, demands, causes of actions, suits, judgments, or any portion thereof including but not limited to attorney's fees, costs and expenses incurred in connection therewith and in enforcing this indemnity, for all losses or damages arising from the operation of the Concession by the Concessionaire; the condition, use, occupancy, repair or maintenance of the Concession Premises; the condition, use, repair or maintenance of any equipment rented to the public by the Concessionaire; Concessionaire's non-observance or non-performance of any law, ordinance or regulation applicable to the Concession or the Concession Premises; willful or negligence acts or omissions of the Concessionaire incurred in obtaining possession of the Concession Premises and Concession Premises after default by the Concessionaire, after Concessionaire's default in surrendering possession upon expiration or earlier termination of the term of the Agreement, or enforcement of any covenants in this Agreement. This includes, without limitation, any liability for injury to the person or property of Concessionaire, its agents, officers, employees, or invitees.

7.2 With respect to the operation of the Concession and use of the Concession Premises by the Concessionaire, and as to claims against the City, its officers, agents and employees, the Concessionaire expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligation to indemnify, defend and hold harmless provided for herein extends to any claim brought by or on behalf of any employee of Concessionaire and includes any judgment, award or costs thereof, including attorneys' fees. THIS WAIVER IS MUTUALLY NEGOTIATED BY AND BETWEEN THE CITY AND THE CONCESSIONAIRE.

7.3 Concessionaire, as a material part of the consideration to be tendered to City, waives all claims against City for damages to equipment used in the Concession operations and loss of business in or upon or about the Concession Premises and for injury to Concessionaire, its agents, employees, invitees or their persons in or upon or about the Concession Premises or from any cause arising at any time, other than for City's sole negligence or willful misconduct.

8. Insurance

8.1 Insurance and Limits. Prior to entering into the Concession Premises, the Concessionaire shall obtain insurance coverage and otherwise satisfy the requirements of this Section:

8.2 Commercial General Liability. The Concessionaire shall maintain in full force and effect during the term of this Agreement, commercial general liability ("CGL") insurance written on an occurrence basis providing insurance coverage for Concessionaire and the City as an additional insured for any and all claims for damages that may result from any act or omission on the part of Concessionaire or the Concession pursuant to this Agreement and any liability to the City which Concessionaire may have as a result of the hold harmless and indemnity agreement set forth in Section 7. Such insurance coverage shall be primary insurance as respect to the City. Any insurance, self insurance, or insurance pool coverage maintained by the City shall be excess of the Concessionaire's insurance and shall not contribute with it. Such insurance shall be provided by an insurance company(s) licensed to do business in the State of Washington, rated no less than A:VII, as shown in the most current issue of A.M. Best's Key Rating Guide, and under forms of policies satisfactory to City.

8.3 Limits. The CGL insurance shall be written with limits no less than \$1,000,000 each occurrence, \$1,000,000 general aggregate and a \$2,000,000 property liability aggregate limit. Said CGL policy shall name the City as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the City.

8.4 Evidence. Concessionaire shall provide a certified copy of any and all applicable insurance policies. Renewal policies, if necessary, shall be delivered to City at least ten (10) days prior to the expiration of the previous policy.

9. Resolution of Disputes. It is the express intent of the parties to provide an efficient, effective and inexpensive method to resolve differences between them regarding performance pursuant to this Agreement. Therefore, except as otherwise expressly stated in this Agreement, the parties expressly agree to submit in good faith to the process set out in this section (the Dispute Resolution Process), which shall be governed by RCW 7.04 and the local mandatory arbitration rules of the Chelan County Superior Court. The Dispute Resolution Process shall be commenced by one party notifying the other (Notice of Dispute). Before demanding arbitration of any Dispute the parties shall comply with the following procedure:

9.1 Negotiation by Senior Executive. The first step in resolving a Dispute is for the parties to exercise reasonable efforts to settle the Dispute through negotiation. Upon the issuance of a Notice of Dispute, each party shall designate a senior executive having discretionary authority to bind the party (except in the case of the City, the ability to advise the City's Council) within three (3) business days, who shall consult and negotiate with each other in good faith and, recognizing the mutual interests of the parties, a just and equitable solution satisfactory to both parties.

9.2 Mediation. If, within ten (10) business days after delivery of the Notice of Dispute, the Dispute cannot be settled through negotiation, the parties shall attempt in good faith to settle the dispute by mediation administered by the Arbitrator.

9.3 Notice of Arbitration. If, within thirty (30) days after the Notice of Dispute the parties do not reach a mutually satisfactory resolution of the Dispute through negotiation or mediation then, upon notice by either party to the other, the Dispute shall be settled by

Arbitration.

9.4 Qualifications of Arbitrator. The Dispute shall be heard and determined by a single arbitrator appointed by agreement of the parties, and failing agreement, according to the process used by the Chelan County Superior Court to select an arbitrator pursuant to the mandatory arbitration rules then in effect. Subject to other provisions of this Agreement, persons eligible for appointment as arbitrators of any dispute covered under this section shall be lawyers admitted to practice before the Supreme Court of the State of Washington, shall have practiced law for a minimum of ten years, and shall have substantial experience in the resolution of commercial and business disputes.

9.5 Discovery and Arbitration Hearing.

9.5.1 Within fifteen (15) days after the notice of arbitration, the Arbitrator shall conduct a preliminary hearing to (i) determine the schedule for the exchange of documents relevant to the Dispute of the parties and names and addresses of persons with knowledge or information relevant to the Dispute and (b) conduct of other discovery appropriate to the resolution of the Dispute; (ii) set a date for the arbitration hearing to receive the parties' proofs and evidence on the Dispute; and (iii) such other procedures as may be necessary under the circumstances. The initial preliminary hearing and any further preliminary hearings may be held by telephone conference call. Unless the Arbitrator, for good cause shown, sets a different date, the hearing to receive the parties' proofs and evidence on the Dispute shall commence no later than ninety (90) days after the notice of arbitration. The parties shall cooperate with each other and with the Arbitrator in respect of the foregoing matters.

9.5.2 At the request of a party and considering the goal of this Article to provide the means by which disputes between the parties can be resolved efficiently, the Arbitrator shall have the discretion to order examination by deposition upon oral examination of witnesses to the extent the Arbitrator deems such discovery relevant and appropriate.

9.5.3 All disputes regarding the process of discovery or the arbitration hearing shall be determined by the Arbitrator, which determination shall be conclusive.

9.6 Good Faith. All provisions of this Article requiring action by either party, whether through negotiation, mediation, or the conduct of the process anticipated in this Article, require such participation by the parties in good faith.

10. No Assignment. Neither this Agreement, nor any rights or privileges granted to the Concessionaire, shall be assigned or sublet without the consent of the City Council of the City of Chelan. Any such assignment shall not relieve the Concessionaire of any obligations under the terms of this Agreement. In the event consent to assignment is given, the City shall have the right to modify any term or condition of this Agreement.

11. Miscellaneous Provisions.

11.1 Modification/Binding Effect. The terms and conditions of this Agreement shall be binding on the Parties, their heirs, successors, administrators, and assigns and shall be

construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Agreement shall be Chelan County, Washington. No alteration, changes, or amendments of this lease will be binding upon either party unless the same are written and executed by the parties.

11.2 TIME IS OF THE ESSENCE of this Agreement and of each and every term, condition and provision in this Agreement.

11.3 Waiver. The waiver by the City of any breach of any term contained in this Agreement shall not be deemed to be a waiver of such term for any subsequent breach of the same or any other term.

11.4 Relationship of the Parties. The Concessionaire is an independent contractor in all respects with respect to the Concession and the License. Nothing in this Agreement shall be considered to create the relationship of employer and employee, principal and agent, or landlord and tenant between the Parties.

11.5 Attorneys Fees. In the event it is necessary for City or Concessionaire to utilize the services of an attorney to enforce any of the terms of this Agreement, such enforcing Party shall be entitled to compensation for its reasonable attorneys' fees. In the event of litigation regarding any terms of this Agreement, the substantially prevailing Party shall be entitled, in addition to other relief, to such reasonable attorneys' fees as determined by the court.

11.6 Notices. Notices from City to Concessionaire of City's intent to inspect the Concession Premises as provided in this Agreement may be oral or in writing. Any other notice under this Agreement must be in writing and must be sent by registered or certified mail to the last known address of the party to whom the notice is to be given, as designated by such party in writing. The City and Concessionaire hereby designate their addresses as follows:

City:	Concessionaire:
City of Chelan	Lake Chelan Sailing Association
PO Box 1669	PO Box 14
Chelan, WA 98816	Chelan, WA 98816

CITY OF CHELAN:

CONCESSIONAIRE:

Lake Chelan Sailing Association

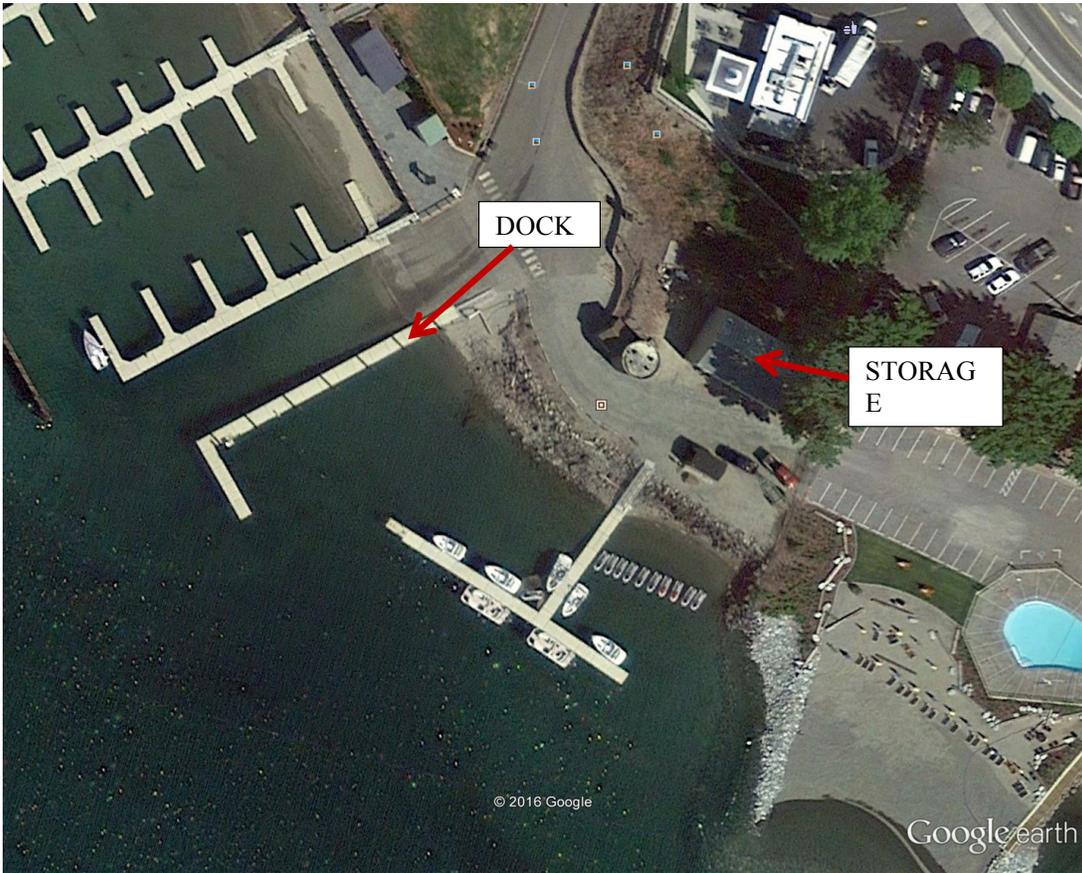
By: _____
Mike Cooney, Mayor

By: _____
Marc Vander Schalie, Commodore

Date: _____

Date: _____

EXHIBIT A
LAKE CHELAN SAILING ASSOCIATION
MARINA PREMISES



AGENDA BILL NO. 2010-012F

BUSINESS OF THE CITY COUNCIL
CHELAN, WASHINGTON

SUBJECT: Mosaic Planning Studio
Professional Services Agreement

EXHIBITS

1. Proposed Mosaic Planning Studio
Professional Services Agreement

FOR AGENDA OF: April 26, 2016

ORIGINATOR: Paul Schmidt
City Administrator

APPROVED:
City Administrator



Reviewed by Attorney: Yes

EXPENDITURE	AMOUNT	APPROPRIATION	FINANCE
REQUIRED: \$9,000	BUDGETED: \$30,000	REQUIRED:	DIRECTOR:

AUTHORITY: RCW 35A.11.010 Rights, powers, and privileges. "Each city governed under this optional municipal code...and, by and through its legislative body, such municipality may contract and be contracted with..."

***** SUMMARY STATEMENT/ISSUES *****

The Planning Department is requesting to retain Mosaic Planning Studio to update the Housing Element of the Comprehensive Plan and associated Housing Manual as part of the statutory required Comprehensive Plan update.

Public Hearing Legislative Matter Other: _____

Suggested Motion:

I move to authorize the Mayor to sign the Mosaic Planning Studio professional services agreement.

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN
THE CITY OF CHELAN and
MOSAIC PLANNING STUDIO**

THIS AGREEMENT, made and entered into by and between The City of Chelan (hereinafter referred to as the CITY) and Mosaic Planning Studio (hereinafter referred to as the CONSULTANT) witnesses that:

WHEREAS the CITY and the CONSULTANT are desirous of entering into an agreement to formalize their relationship, and

WHEREAS it would be beneficial to the CITY to engage the CONSULTANT as an independent entity to accomplish the services set forth herein, and such endeavor would tend to best accomplish the CITY's land use planning objectives;

NOW THEREFORE, in consideration of the mutual promises, covenants, and provisions contained herein, and the mutual benefits to be derived therefrom, the parties hereto agree as follows:

1. CONSULTANT'S Services:

- A. The CONSULTANT agrees to provide the CITY with assistance on the work described in the Statement of Work included as Attachment A.
- B. Additional services may be provided if agreed to in writing by the Planning Director.
- C. The CONSULTANT agrees to provide its professional services in accordance with generally accepted standards of the planning profession.

2. CITY Responsibilities:

- A. The CITY agrees to provide the CONSULTANT with all the information, surveys, comments, reports, and professional recommendations requested by the CONSULTANT in order to provide the CONSULTANT'S professional services. The CONSULTANT may reasonably rely on the accuracy and completeness of said items.
- B. The CITY agrees to provide the items described in Paragraph 2.A promptly and to make timely decisions so as not to delay the orderly and sequential progress of the CONSULTANT'S services.

3. Agreement Period: The effective date of this Agreement shall be May 1st, 2016. The termination date of this Agreement shall be December 31st, 2016.

4. Compensation and Payments:

- A. The total compensation shall not exceed \$25,000.00 unless otherwise agreed to in writing.
- B. The CITY shall reimburse the CONSULTANT for the services described in Section 1 above according to the following rates unless otherwise agreed to by the CONSULTANT and the CITY.

Staff Time (hourly rate)		Direct Charges	
Principal Planner	\$100.00	Copies	\$0.10/each (single-side)
Associate Planner	\$85.00	Faxes	\$1.00/page
Travel (Principal or Associate Planner)	\$70.00	Telephone	at cost
Clerical	\$50.00	Meals, lodging	at cost
		Maps	at cost
		Miscellaneous	at cost
Mileage			
Mileage	\$0.54/mile	Overhead (direct charges only): 5%	

C. Additional Services: Additional services shall be billed at the same rates unless otherwise agreed to by the CONSULTANT and the CITY.

D. The CONSULTANT shall prepare a monthly invoice requesting payment. The CITY shall, within 30 days of receipt of such invoice, remit a check to the CONSULTANT for the amount requested on the CONSULTANT'S invoice unless otherwise agreed upon by both parties.

E. A service charge of 1.5% per month will be charged on all amounts due more than 30 days.

5. Evaluation and Monitoring

A. The CONSULTANT shall prepare a monthly report, which may be included in an invoice, indicating the type of service rendered by task, the amount of time provided, and summaries of time spent to date during the preceding month and for the contract period to date.

B. The CONSULTANT shall cooperate with and freely participate in any monitoring or evaluation activities conducted by the CITY that are pertinent to the intent of this Agreement.

C. The CITY or the State Auditor or any of their representatives shall have full access to and the right to examine and copy, during normal business hours, all of the CONSULTANT'S records relating to its work covered by this Agreement.

6. Equal Employment Opportunity. The CONSULTANT agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

7. Modifications: The CONSULTANT and the CITY agree to discharge their responsibilities under this Agreement in good faith, and recognize that this Agreement requires flexibility in construing and implementing work described in Section 1 above. Either party may, from time to time, request changes to this Agreement, which when agreed to by the other party in writing, amend and become a part of this Agreement.

8. Assignability: The CONSULTANT shall not assign or transfer any interest in this contract without the prior written consent and approval of the CITY, which consent shall not unreasonably be withheld.

9. Status of CONSULTANT: The CONSULTANT is an independent contractor and not an employee or agent of the CITY.

10. Records, Documents, And Reports: The CONSULTANT shall maintain books, records, documents, and other evidence, and shall employ accounting procedures and practices which sufficiently and properly reflect all hourly charges and direct costs of any nature expended in the performance of this

Agreement. Those records shall be subject at all reasonable times to inspection, review, or audit by the CITY'S personnel and other personnel duly authorized by the CITY or the Office of the State Auditor. The CONSULTANT will retain all books, records, documents, and other material relevant to this Agreement for three years after expiration of this agreement, and the Office of the State Auditor, or any person duly authorized by the CITY, shall have full access to and the right to examine any of said materials during said period.

11. Indemnity Agreement.

A. The CONSULTANT shall hold the CITY harmless from, and shall indemnify the CITY against, any and all claims, demands, actions or liabilities arising from the services provided by the CONSULTANT, its agents, employees or sub-consultants, in connection with the performance of this Agreement.

B. The CONSULTANT shall be required to indemnify the CITY in those cases in which damages have been caused by the concurrent negligence of the CITY and the CONSULTANT, its agents, employees or sub-consultants. In those cases, the liability of the CONSULTANT for indemnifications shall be limited to that portion of the damages caused by the act or omission of the CONSULTANT, its agents, employees or sub-consultants.

C. The CONSULTANT has no duty to indemnify the CITY in those cases in which damages were caused by the negligence of the CITY.

12. Special Provisions.

- A. This Agreement is the entire and integrated agreement between the CITY and the CONSULTANT and supercedes all prior negotiations, statements, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CITY and the CONSULTANT.
- B. Except to the extent the CONSULTANT has agreed to indemnify the CITY, the CITY shall hold the CONSULTANT harmless with respect to its actions taken on the basis of the CONSULTANT'S work or work product.
- C. The parties agree that in the event a civil action is instituted by either party to enforce any of the terms and conditions of this Agreement, or to obtain damages or other redress for any breach hereof, the prevailing party shall be entitled to recover from the other party, in addition to its other remedies, its reasonable attorney's fees in such suit or action and upon any appeal therefrom.
- D. The CONSULTANT shall provide evidence of comprehensive general liability insurance which includes, but is not limited to, operations of the CONSULTANT, commercial general liability, and blanket limited contractual liability with limits of not less than \$1,000,000.00 per occurrence. The CITY shall be named as an additional insured as respects this Agreement. In conjunction therewith, the CONSULTANT shall furnish a certificate of such insurance to the CITY when this agreement is executed.
- E. The CONSULTANT shall maintain automobile liability insurance with limits of not less than \$300,000.00 per occurrence.
- F. The CONSULTANT shall provide professional errors and omissions liability insurance which shall provide coverage for any negligent professional acts, errors or omissions for which the CONSULTANT is legally responsible, with limits of not less than \$1,000,000.00 per occurrence. The CONSULTANT shall furnish a certificate of such insurance to the CITY when this agreement is executed.

13. Agreement Termination.

- A. Termination: Either party may terminate this contract by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date. In the event of such termination, the CITY shall pay the CONSULTANT all amounts due for all work previously authorized and performed prior to the date of termination. In the event of termination, the CONSULTANT agrees to cooperate reasonably with any consultant or CITY employee thereafter retained by the CITY in making available information developed as the result of work previously performed by the CONSULTANT.
- B. Breach or Default: In the event the CITY alleges breach of this Agreement by the CONSULTANT, the CITY shall give the CONSULTANT ten (10) days written notice to cure any alleged breach prior to termination of this Agreement. If the CONSULTANT fails to remedy the breach within ten (10) days after receipt of said notice, the CITY may terminate this Agreement.

14. Ownership of Documents

- A. All original reports and drawings prepared by the CONSULTANT, as provided under this Agreement, shall become the sole property of the CITY upon payment to the CONSULTANT of the fee as set forth in this Agreement.
- B. The CONSULTANT reserves the right to include representations of the work performed under this Agreement, including documents, data and systems, in its promotional and professional materials.

15. Governing Law and Venue: This Agreement shall be governed by the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Okanogan County, Washington.

16. Severability: The terms and conditions of this Agreement are severable, in that the invalidity of a part does not affect the validity of the whole.

The CITY and CONSULTANT execute this Agreement on the date and year written below:

CITY OF CHELAN:

MOSAIC PLANNING STUDIO

By:
Mayor Mike Cooney

By:
Sandra Strieby, Owner and Principal Planner
P. O. Box 962
Twisp, WA 98856
(509) 997-2576

Date: _____

Date: _____

ATTACHMENT "A"
STATEMENT OF
WORK

Tasks	Description
<u>Housing Element update</u>	Review housing element and related documents (including the Community Housing Manual and Downtown Master Plan), and draft any amendments needed to meet the City's needs and GMA requirements, including updating the Demographic Profile, the Inventory and Analysis, and the data and data analyses in the Needs Assessment; and making any other changes needed to the Needs Assessment and the Goals and Policies. Participate in related meetings, including any public workshop or open house sessions, as requested by the Planning Director.
<u>Basic Services</u>	On request, provide assistance, advice and guidance to the Planning Director, or, if specifically requested by the Planning Director, to the Planning Commission, City Council, or Staff. This task may include work on amendments to the Transportation Element and additional work related to affordable housing.

City of Chelan
Proposed 2014 Budget and Scope of Work

2016 Housing Element update cost estimate

Scope of work: Review housing element and related documents (including Community Housing Manual and Downtown Master Plan), and draft any amendments needed to meet the City's needs and GMA requirements, including updating the Demographic Profile, the Inventory and Analysis, and the data and data analyses in the Needs Assessment; and making any other changes needed to the Needs Assessment and the Goals and Policies. Participate in related meetings, including any public workshop or open house sessions, as requested by the Planning Director.

	Sandra	Travel	Total
	hours	hours	hours
Project initiation and document review	4	0	4
Update demographic profile, including sections on population, households, income, and employment, using available data	19	0	19
Update Inventory and Analysis, including housing inventory, housing condition, vacancy rates, and housing costs, using available data. <i>Does not include new field work.</i>	24	0	24
Update Needs Assessment data and data analyses. <i>Does not include update of community priorities or other sections of the needs assessment that reflect the City's goals, policy direction, or priorities.</i>	6	0	6
Update Introduction, Intent, and Process sections as needed and integrate all sections so that the element flows smoothly and logically. Includes up to two rounds of edits.	6	0	6
Planning Commission and City Council meetings, including any associated public workshop or open house and including preparation and follow-up	12	4	16
Project management. Includes consultations and communication with Craig and up to one trip to Chelan	7	2	9
TOTAL time	78	6	84
Hourly rate	\$100	\$70	
TOTAL cost of planning and travel time	\$7,800	\$420	
Mileage		\$170	
TOTAL	\$8,390		

Mosaic Planning Studio
06.02.14 draft
Task 1

AGENDA BILL NO. 2016-013A

BUSINESS OF THE CITY COUNCIL
CHELAN, WASHINGTON

SUBJECT: Lookout Winery District Planned
Development District and
Development Agreement

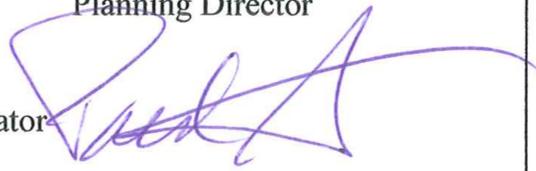
EXHIBITS

1. Proposed Ordinance
2. Memo from City Attorney

FOR AGENDA OF: April 26, 2016

ORIGINATOR: Craig Gildroy
Planning Director

APPROVED:
City Administrator



Reviewed by Attorney: Yes

EXPENDITURE REQUIRED:	AMOUNT BUDGETED:	APPROPRIATION REQUIRED:	FINANCE DIRECTOR:
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AUTHORITY: RCW 35A.11.020 Powers vested in legislative bodies of noncharter and charter code cities. "The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter... Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city..."

***** SUMMARY STATEMENT/ISSUES *****

City Council will consider the Ordinance approving the Winery District Planned Development District and the Development Agreement between the City and Chelan Lookout, LLP, prepared by the City Attorney as the City Council requested at its March 24, 2016 meeting.

Public Hearing Legislative Matter Other: _____

Suggested Motion:

I move to adopt Ordinance No. 2016-1508 as prepared by the City Attorney approving the Winery District Planned Development District and the Development Agreement between the City and Chelan Lookout, LLP.

ORDINANCE NO. 2016-1508

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF CHELAN, WASHINGTON, APPROVING THE
WINERY PLANNED DEVELOPMENT DISTRICT AND
THE DEVELOPMENT AGREEMENT FOR THE
LOOKOUT AND SETTING AN EFFECTIVE DATE.**

RECITALS

- A. The City of Chelan's Office of Planning and Community Development received three applications (the "Lookout Applications") from Chelan Lookout, LLLP (the "Developer") relating to the development of the real property described in Exhibit A (the "Subject Property") known as the "Lookout":
- an application for preliminary and final development plan of a 27.5 acre Planned Development District, under CMC 20.52 called the "Winery Planned Development District (the "Winery PDD")"; and
 - an application for a preliminary subdivision for 137 residential lots ranging in sizes from 3,600 square feet to 9,109 square feet within the Winery PDD (the "Winery District Plat"), under CMC 16.16; and
 - a Development Agreement between the City and Chelan Lookout LLP establishing and vesting land uses, dimensional standards, project phasing, utilities and associated fees, transportation and secondary access, water rights, parking management, open space and maintenance, trails/pedestrian connections, and affordable housing contributions for the entire Subject Property (the "Lookout Development Agreement"), under CMC 19.38, which will govern the existing Lookout PDD (formerly Granite Ridge PDD) and the Winery PDD.
- B. CMC Title 19 sets out the following processes for reviewing the Lookout Applications, where the Hearing Examiner conducts an open record hearing and the City Council conducts a closed record public meeting:

Project Permit	Type of Project Permit	Hearing Examiner's role	City Council's role
Planned Development District: preliminary and final development plan	IIIB	Recommendation to City Council	Final Decision by Ordinance
Subdivision: preliminary plat	IV	Final Decision	NA
Development Agreement	IIIB	Recommendation to City Council	Final Decision by Ordinance

- C. The Hearing Examiner held an open record public hearing on the Lookout Applications on February 9, 2016, after notice thereof was issued in accordance with the provisions of the Chelan Municipal Code. In addition to the presentations and advice from the City's staff and the presentation and response to the Examiner's questions by the Developer, the Hearing Examiner heard testimony from Michael Zoretic, an attorney representing Whiskey Ranch, LLC, who alleged deficiencies regarding traffic circulation and the need for secondary access to the Lookout pursuant to the City's Municipal Code and potential environmental impacts from grading activities on the Subject Property associated with the Winery District Plat; and
- D. The Hearing Examiner issued Findings of Fact, Conclusions of Law, Recommendations and Conditions of Approval, dated March 7, 2016 (the "Hearing Examiner's Recommendations"), a copy of which is attached as *Exhibit "B,"* which:
- approved the Winery District Plat, subject to the City Council's approval of the Winery PDD and the Lookout Development Agreement, and subject to the Developer obtaining all federal, state and local permits, obtaining a grading permit in compliance with the City of Chelan's Municipal Code 14.10—Critical Areas, Grading Ordinance, and obtaining an NPDES Construction Stormwater General Permit from the Washington State Department of Ecology;
 - recommended the Winery PDD be approved subject to the Examiner's Findings of Fact, Conclusions of Law and Conditions of Approval;

and

- recognizing the development agreement between the Developer and the City were not finalized, the City enter in the Lookout Development Agreement that is substantially the same form and contains substantially the same components as provided to the Hearing Examiner; and
- E. The City's Council held a closed record public meeting on March 24, 2016 to consider the Hearing Examiner's Recommendations, after notice given according to the requirements of the Chelan Municipal Code; and
- F. Based on recommendations from the City's public works department prior to the February 9, 2016 open record hearing before the Hearing Examiner, the Lookout Development Agreement was revised, as follows, which the City Council approves as being substantially the same form and containing substantially the same components as the draft Development Agreement presented to the Hearing Examiner:
- Parking and Traffic Management Enforcement, section 4.2.5. On-street parking rules were clarified to require 20 feet of clear access except for Porcupine Lane and Jackrabbit Lane;
 - Secondary Access, section 4.2.6. Pursuant to the City's Development Standards regarding secondary access, section 5C.090(F), to meet life-safety and fire protection requirements, the Developer will construct and maintain at its sole cost and expense, a 20 feet-wide temporary (gravel) secondary access in a location approved by the City's Department of Public Works that is accessible at all times for emergency and public service vehicles. Pursuant to the City's Development Standards regarding additional access, section 5C.090(E), the Developer will construct a permanent secondary access on the earlier of WSDOT's completion of the No-See-Um Roundabout, the construction of 100 ERU's within the Project Area, or when the Lookout Development generates 1,000 Averaged Daily Trips;
 - Construction and maintenance of Project Open Space, section 4.3.4. The City will maintain the multi-modal trail within the Lookout Development once it is improved to an asphalt or non-gravel surface;
 - Utility Construction, section 7.1.1. The Developer will pay \$66,360 as its pro-rata share of the cost to upgrade the waterline from the Darnell Booster Pump Station;
 - Granite Ridge Lift Station, 7.1.2. The Developer may continue to use the Granite Ridge Lift Station to serve up to 80 ERUs within the Project

Area, with sewer requirements beyond 80 ERUs to be provided by the Lords Acres Regional Lift Station, subject to owners of lots within the Project Area paying the general facility charge in effect on connection to the City's domestic sanitary sewer;

- Sewer hook-up fees, section 7.1.3. An owner of a lot shall pay the City's then-current domestic water service and sanitary sewer service general facility charges, except for the owners of 7 specific lots;
 - Water and sewer capacity, section 8.1. Based on the Developer's commitments, the City warrants treatment capacity and line capacity for the Project; and
 - Project Water Rights, section 8.2. The basis for the calculation for project water rights under CMC 13.40 is clarified.
- G. After deliberation including the concerns raised by Whiskey Ranch, LLC, the City's Council accepted the Hearing Examiner's Recommendations approving the Winery PDD and the Lookout Development Agreement and instructed the City Attorney to prepare an adopting ordinance; and
- H. Whiskey Ranch, LLC has filed a lawsuit, *Whiskey Ranch, LLC v. City of Chelan, et. al.*, Chelan County Superior Court Cause No. 16-2-00271-9, on March 25, 2016, under RCW 36.70C ("LUPA"), requesting the Court stay the Winery District Plat due to:
- The Planning Director's Determination of Nonsignificance ("DNS") was clearly erroneous under SEPA because it failed to adequately address and mitigate the probable significant adverse environmental impacts from the mass grading of the Winery District Plat, based on Whiskey Ranch's information and belief the Developer intends to immediately begin mass grading and development of the Winery District Plat portion of the Subject Property, which will result in 43,000 cubic yards of excess material;
 - The Developer not being required to construct a permanent secondary access to and from the Winery District Plat, in violation of the City's Development Standards;
- I. Based on information and evidence presented to the Hearing Examiner, the City Council finds and concludes the Lookout Development Agreement, in section 4.2.6, *inter alia*, requires the Developer, upon the effective date of the approval of the Winery District PDD and Development Agreement, to immediately construct and maintain a temporary secondary access that is accessible at all times for emergency and public services vehicles consistent with the City's life-safety and

fire protection requirements in its Development Standards, Section 5C.090(F), and, to construct a permanent secondary access upon the earlier of WSDOT's completion of the No-See-Um Roundabout, the construction of 100 ERUs within the Subject Property, or when the entire Lookout development generates 1,000, ADTs, pursuant to the City's Development Standards, Section 5C.090(E).

- J. Based on information and evidence presented to the Hearing Examiner, specifically Conditions of Approval 2, 11, 13(3), and 17, the grading of the Winery District Plat portion of the Subject Property will not result in significant adverse environmental impacts and will be conducted consistent with local, state and federal requirements, including the requirements to obtain a grading permit from the City's Building Department in compliance with the Chelan Municipal Code 14.10 (Critical Areas), and to obtain an NPDES Construction Stormwater General Permit from the Washington State Department of Ecology based upon a comprehensive surface water protection plan (SWPP).
- K. The City has complied with the substantive, procedural and notice requirements associated with SEPA, the Growth Management Act and the Chelan Municipal Code for the purpose of reviewing the Lookout Applications, and including the public in said process.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHELAN, WASHINGTON, DO ORDAIN AS FOLLOWS:

- Section 1. Incorporation of Recitals. The Recitals are incorporated into this Ordinance.
- Section 2. Incorporation of the Hearing Examiner's Recommendations. The Hearing Examiner's Recommendations are approved and are incorporated into this Ordinance.
- Section 3. Acceptance of Recommendation: Designation of Zoning. The recommendation of the Hearing Examiner to change the zoning designation of the Winery PDD portion of the Subject Property to P.D. is accepted, and the change in the zoning designation is so ordered.
- Section 4. Amendment of Maps. The Director of the Department of Planning and Community Development shall update the City's Comprehensive Plan and Zoning maps to reflect the change of the zoning designation of the Winery PDD portion of the Subject Property pursuant to this Ordinance.
- Section 5: Acceptance of Recommendation. Development Agreement. The Development Agreement is approved and the Mayor may execute it on behalf of the City.
- Section 6: Severability. If any term or provision in this Ordinance is determined to

be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other term or provision of this Ordinance.

Section 7. Publication and Effect. This Ordinance, or a summary, shall be published in the official newspaper of the City of Chelan and shall take effect and be in full force thirty (30) days after passage and publication. The title to this Ordinance is approved as a summary of this Ordinance.

PASSED by the City Council of the City of Chelan, Washington, this 26th day of April, 2016.

Mike Cooney, Mayor

ATTEST:

Peri Gallucci, City Clerk

APPROVED AS TO FORM:

Allan Galbraith, City Attorney

FILED WITH THE CITY CLERK: April 21, 2016

PASSED BY THE CITY COUNCIL:

PUBLISHED:

EFFECTIVE DATE:

ORDINANCE NO.:

EXHIBIT A

Ordinance No. 2016-1508

Legal Description

That portion of Section 11, Township 27 North, Range 22 East of the Willamette Meridian, City of Chelan, Chelan County, Washington, more particularly described as follows:

Granite Ridge, according to the plat thereof recorded August 16, 2005, under Auditor's File Number 2206883, records of said County;

TOGETHER WITH Parcel B, Boundary Line Adjustment/Record of Survey, recorded September 24, 2004, under Auditor's File Number 2183783, records of said County;

AND TOGETHER WITH that certain parcel of land set forth and described within Warranty Deed recorded February 20, 2015, under Auditor's File Number 2413744, as defined by City of Chelan Boundary Line Adjustment No. 2014-02CH, recorded May 30, 2014, under Auditor's File Number 2401032, records of said County;

AND TOGETHER WITH that certain parcel of land set forth and described within Statutory Warranty Deed recorded March 31, 2015, under Auditor's File Number 2415653, as defined by Record of Survey recorded April 29, 2015, under Auditor's File Number 2417100, records of said County.

MEMO

To: City Councilmembers
From: Allan Galbraith, Assistant City Attorney
RE: Proposed Ordinance approving the Winery District Planned Development District and the Development Agreement between the City and Chelan Lookout, LLP
Date: April 20, 2016
For: Council Meeting of April 26, 2016

1. Introduction. This Memo points out important provisions in the proposed Ordinance No. 16-1508, prepared at your direction on March 24, 2016, after you accepted the Hearing Examiner's recommendation to approve the Winery Planned Development District ("PDD") and the associated Development Agreement between the City and Chelan Lookout LLLP.

The Proposed Ordinance arises under unusual circumstances: Whiskey Ranch, LLC, which owns property in the vicinity of, but not adjoining the property subject to the permits at issue, has sued the City, contending the Hearing Examiner's Decision approving the Winery District Plat and the Planning Director's issuance of a 'Determination of Nonsignificance' ("DNS") were in error.

Since the Council accepted the Hearing Examiner's recommendation to approve the PDD and Development Agreement on March 24, the Proposed Ordinance is based on the evidence presented to the Hearing Examiner, as well as relevant legal standards discussed in this Memorandum.

2. The legal rights and roles. It is important to place the competing rights of Chelan Lookout and Whiskey Ranch, as well as the City's role, and the nature of the land division, in the appropriate contexts.

2.1 The Developer. Chelan Lookout, as any property owner, has the right to develop the property it owns according to the City's codes, including the land use plans and development regulations. This right is guaranteed in several authorities, including RCW 58.18.033, CMC 19.10 and decisions of the Supreme Court, such as *Nobel Manor Co. v. Pierce County*, 133 Wn2d 269, 943 P.2d 1378 (1997).

2.2 Whiskey Ranch. Whiskey Ranch has the right to be notified of applications for permits on neighboring property, to participate in the process of reviewing and acting on the permits, as well as appealing decisions it feels were made contrary to the law. Whiskey Ranch was notified of Chelan Lookout's applications and the open record hearing. Whiskey Ranch filed written comments, attended and participated in the open

record hearing. Also, Whiskey Ranch filed the Whiskey Ranch LUPA, which is described in more detail, in Section 3, below.

2.3 The City's Role. The City has two roles: establishing standards for property development and processing applications for development.

The development standards are established through the Comprehensive Plan that is renewed annually; various subplans, such as the 2009 Lord Acres Subarea Plan and the 2002 Lakeside Trail Plan; various Codes, such as the Zoning Code, the Land Division Code, the Environmental Code and various building codes; and Development Standards.

The development processes are standard procedures for land use and development permit decisions in CMC Title 19. These procedures are designed to promote timely and informed public participation, eliminate redundancy in the application permit review and appeal processes, and minimize delay and expense, ultimately resulting in development approvals that further the City's goals in the comprehensive plan. See CMC 19.10.010.

2.4 The Land Division Decisions. Ultimately, the division of Chelan Lookout's property is accomplished through a subdivision process. Chelan Lookout's global plan is to develop a mixed-use community focused on smaller individual lots with large amounts of more open space. Consequently, it sought to 'rezone' its property, authorized by CMC 17.52, and articulate the new standards through a Development Agreement, authorized by CMC 19.58. Therefore, Chelan Lookout applied for three development permits and they have been considered in unison through four separate 'land use decisions' that are based on different legal standards and are approved under different processes, summarized in this table:

Application for Project Permits	Specific authority for permit	Type and Process to approve permit CMC 19.14 and 19.18	Roles in making a "land use decision"		
			Planning Director	Hearing Examiner	City Council
SEPA	CMC 14	II	Final Decision	NA	NA
Planned Development District: preliminary and final development plan.	CMC 17.52	IIIB	NA	Recommendation to City Council for final decision	Final Decision by Ordinance
Subdivision: preliminary plat	RCW 58.17 and CMC 16.16	IV	NA	Final Decision	NA
Development Agreement	CMC 19.38	IIIB	NA	Recommendation to City Council for final decision	Final Decision by Ordinance

The Hearing Examiner approved the preliminary Winery District Plat, subject to several conditions, including the City Council's approval of the Winery PDD and the Development Agreement, which must be by the Proposed Ordinance. Upon approval of a

preliminary plat, a developer is authorized to develop the improvements required for the subdivision. CMC 16.16.040. Upon completing the improvements, the developer files an application for a final plat, which is accomplished by the City Council by ordinance after it confirms all the conditions for the preliminary plat are satisfied. CMC 16.16.070. Upon approval of the final plat, the developer can then complete sales of the subdivided lots.

The issues raised by Whiskey Ranch is over the adequacy of the conditions for grading and secondary access relative to the Winery District Plat.

3. The Whiskey Ranch LUPA. The Whiskey Ranch filed its LUPA action on March 25 alleging two errors:

- Grading. the Planning Director's issuance of a DNS failed to adequately address and mitigate the probable significant adverse **environmental impacts from a mass grading** of the Winery District Plat which will result in approximately 43,000 cubic yards of dirt, the equivalent of approximately 2,000 truckloads, or the storing of and/or transporting the dirt, or the dust impacts; See LUPA Petition §5.2.1, pages 12-13; and
- Secondary Access. The Hearing Examiner failed to require a **permanent secondary access** to and from the Winery District and SR 150 prior to occupancy of any dwelling unit in the Winery District Plat, in violation of the City's Street Standards. See LUPA Petition §5.1 pages 10-11.

The Whiskey Ranch LUPA alleges these decisions were "clearly erroneous, an erroneous application of the law, not supported by substantial evidence in the record, and/or outside the City's jurisdiction," which are the standards for relief under LUPA. *Id.*

The balance of this Memo will outline the evidence in the Hearing Examiner's Record and legal standards for grading on and secondary access to the Winery District Plat.

4. Evidence and standards relating to grading and secondary access.

4.1 Grading.

4.1.2 Legal requirements for grading. When land is graded (excavated or filled) in the City it must be pursuant to a permit issued by the City's Building Department. A grading permit review is based the standards contained in "Appendix J, "Grading" of the 2012 International Building Code, adopted by the City in CMC 15.04.020(A). Generally, Appendix J requires permits for grading, sets out what information must be provided in an application for a grading permit, and provides for inspections and the standards for grading. One of the issues that must be addressed is erosion by the wind.

4.1.3 Evidence in the Hearing Examiner Record. The Hearing Examiner Record includes substantial evidence on the grading of the Winery District Plat. All of the evidence concludes the grading of the Winery District will be subject to review

and approval of the City based on the standards of the 'Grading Code' when it reviews and issues a grading permits.

The Staff Report identified that Chelan Lookout would be grading (moving) approximately 43,000 cubic yards of soil and recommended the Plat be conditioned on Chelan Lookout complying with all applicable local, state and federal grading rules and regulations. The Staff Report also specifically recommended Chelan Lookout be required to obtain a grading permit from the City and a NPDES Construction Stormwater General Permit from the Department of Ecology (which contains more stringent requirements than the City's permit requirements) as a condition of approving the subdivision. Despite Whiskey Ranch's allegations in the Petition, Whiskey Ranch's January 28, 2016 SEPA comment letter (submitted as KLN Construction) did not comment on the grading or raise the issues later raised in its LUPA Petition.

Whiskey Ranch delivered a letter for the Hearing Examiner at the February 9, 2016 open record hearing, and its attorney raised questions on grading. Whiskey Ranch did not provide any testimony or other evidence regarding the grading of the Winery District Plat.

During the open record hearing, Sam Nielson, a civil engineer from Parmetrix who prepared the civil and utility plans, including the grading plan, testified that the grading of the area was a leveling of the property. The grading would not create a mountain of soil, as implied by Whiskey Ranch, but would push soil from a high point on the property to a low point on the property. Guy Evans, the project manager for Chelan Lookout also testified that bulldozers and scrapers would take dirt for a high point to a low point. Mr. Evans also testified the disturbed ground would be seeded and irrigated, as Chelan Lookout wants to attract visitors and buyers to the site. Mr. Nielson testified Chelan Lookout must obtain an NPDES permit before grading, which requires erosion and dust control.

4.1.4 Conditions on the Winery District Plat. Based on this evidence, the Hearing Examiner's Decision acknowledged Whiskey Ranch's questions and adopted the Staff Report's recommendations that the Developer:

- obtain all required permits (Conditions 2 and 8);
- obtain a grading permit from the City's Building Department that identified the location of exported soil (Condition 11);
- obtain a final grading permit prior to final plat approval (Condition 13); and
- obtain an NPDES Construction Stormwater General Permit from the Department of Ecology (Condition 17).

4.1.5 The Proposed Ordinance. Based on the record, including the transcript of the open record hearing, the Proposed Ordinance includes Recital J, which expressly states the Hearing Examiner's conditions. Also, Section 2 of the Proposed Ordinance incorporates the Hearing Examiner's Recommendations.

4.2 Secondary Access.

4.2.1 Legal requirements for secondary access. The City's Development Standards address secondary access for two reasons: traffic volume and health and safety:

Section 5C.090.E addresses *traffic volume* by requiring a secondary access to a major collector or arterial when a traffic count of 1,000 Average Daily Trips (ADT) is reached. This traffic count standard is equal to approximately 100 single-family residences.

Section 5C.090.F addresses *health and safety*, insofar as fire trucks and ambulances are able to gain access to a site in a timely manner, by requiring secondary access when the number of single family dwelling units exceeds 30, unless all dwelling units are built with residential sprinklers. In the case of all residential units being sprinkled, the secondary access is not required until 100 single-family dwelling units are reached. This requirement was added in 2007 to bring the City's standards into compliance with the International Fire Code, Appendix D, regarding fire apparatus access roads. Appendix D allows for gravel surfaces and gating.

As interpreted by the City's Public Works Department, under the conditions presented with the Winery District Plat, the requirement for secondary access does not need to be permanent, but can be temporary until traffic volumes require a permanent solution.

4.2.2 Evidence in the Hearing Examiner Record. The Hearing Examiner Record includes substantial evidence on the requirement of secondary access.

At the open record hearing, Deanne Reynolds, of the City's Public Works Department, testified the original Granite Ridge Development pre-dated the requirements for secondary access. It currently has approximately 50 homes. Consequently, the Winery District Plat triggers the *health and safety requirement (30 homes)* for secondary access, but not the *traffic volume requirement (1,000 ADT or 100 homes)*. The Chelan Lookout's traffic analysis done in March, 2015 identified a secondary access to SR 150 that satisfied the City: it already provides an access point for a home, so there would not be a new access point that would have to be permitted by WSDOT, and the site distance was acceptable. A temporary secondary access at this location satisfies the *health and safety requirement*. Ms. Reynolds also testified that the "No-See-Um Roundabout" will be completed in 2017 and the proposed permanent secondary access would be part of the Roundabout. This satisfies the *traffic volume requirement*. Because of this, the initial secondary access would be temporary, rather than be completed with asphalt, curbs, gutters and sidewalks that would be torn out when the No-See-Um Roundabout is constructed.

Besides raising the issue for secondary access, Whiskey Ranch did not provide any evidence at the open record hearing.

4.2.3 Requirement for Secondary Access in the Development Agreement. Because the Winery District Plat triggers the *health and safety* requirement for secondary access, the City, through the Public Works Department, requires a temporary access road for fire trucks and ambulances until either the No-See-Um Roundabout is constructed, 100 ERUs are constructed within the total Project Area of the Winery District Plat

and the original Granite Ridge Plat, or when the total Project Area generates 1,000 ADTs. This requirement is set out in the Development Agreement at section 4.2.1:

4.2.1 Secondary Access. Pursuant to the City's Development Standards, Section Five, Street Standard, 5C.090.E and .F and the Traffic Impact Analysis prepared by TENW dated March 5, 2015, Chelan Lookout will construct a secondary access to the Project Area as follows:

4.2.1.1 Temporary Emergency/Public Services Access. Prior to approval of any Development Permit within the Winery District, Chelan Lookout shall construct and maintain at its sole cost and expense a 20'-wide temporary secondary access in a location approved by the City's Department of Public Works that shall be accessible at all times for emergency and public services vehicles. The temporary secondary access may be constructed with a gravel surface, without sidewalks or other improvements and shall be maintained until the secondary access in Section 4.2.6.2 is constructed.

4.2.1.2 Permanent Secondary Access. Chelan Lookout, at its sole cost and expense, shall construct a permanent secondary access to the Project Area upon the earlier of WSDOT's completion of the No-See-Um Roundabout, construction of 100 ERUs within the Project Area or when the Project generates 1,000 ADTs. The permanent secondary access shall be constructed pursuant to the standards in 5C.030 for a Minor Collector. If WSDOT has completed the No-See-Um Roundabout when the permanent secondary access must be constructed, it will be located through the "Lords Acres" parcel to align with and connect to the No-See-Um Roundabout. If WSDOT has not completed the No-See-Um Roundabout when the permanent secondary access must be constructed, it may be in an alternative location approved by the City's Department of Public Works.

4.2.4 Conclusion: The Development Agreement satisfies the requirements for secondary access. Based on the record, including the transcript of the open record hearing, the Proposed Ordinance includes Recital I, which expressly restates section 4.2.1 of the Development Agreement, the Winery District Plat conforms to the legal requirements for secondary access.

5. Conclusion. Proposed Ordinance 16-508, in concert with the Hearing Examiner's final decision approving the Winery District Plat, satisfies all requirements for the Chelan Lookout Development. Specifically, the Hearing Examiner's Decision appropriately conditioned the Winery District Plat to obtain a grading permit, which will address the issues raised by Whiskey Ranch. Also, the Development Agreement requires secondary access.

**CITY OF CHELAN
LAND USE HEARING EXAMINER**

IN THE MATTER OF:)	
)	
PDD2015-01)	FINDINGS OF FACT,
SUB2015-01)	CONCLUSION OF LAW, AND
SEPA2015-01)	DECISION, RECOMMENDATIONS AND
Chelan Lookout LLLP)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the City of Chelan Hearing Examiner on February 9, 2016, 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. OVERVIEW

- 1.1 This matter involves three project permit applications submitted by Chelan Lookout LLLP. The three applications, while subject to their own specific approval criteria, are being considered holistically as they are co-dependent.
- 1.2 First is the application for preliminary and final development plan approval of a 27.5-acre Planned Development District, to be called the "Winery Planned Development District (PDD)." The project is located immediately east of the existing 63-acre Lookout Planned Development District, formerly known as Granite Ridge. Approval of a PDD shall modify and supersede all regulations of the underlying zoning district.
- 1.3 Second, is the application for a preliminary subdivision for 137 residential lots ranging in size from 3,600 square feet to 9,109 square feet. The preliminary subdivision is proposed to be constructed in phases, with each individual phase processed through the final plat process.
- 1.4 Third, a Development Agreement between the City and Chelan Lookout LLLP establishes and vests land uses, dimensional standards, project phasing, utilities and associated fees, transportation and secondary access, water rights, parking management, open space and maintenance, trails / pedestrian connections, and affordable housing contributions. The Development Agreement includes both the existing Lookout PDD and proposed Winery PDD.
- 1.5 The proposed Winery Planned Development District and Development Agreement are processed as a Type IIIB project permit applications, where the Hearing Examiner conducts an open record hearing and makes a recommendation to the City Council for a final decision. The Preliminary Subdivision is processed as a Type IVA project permit application, where the Hearing Examiner conducts an open record hearing and makes a Final Decision, conditioned on approval of the Winery Planned Development District by the City Council.

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Chelan Lookout LLLP
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49. The Lookout originally applied to construct roads in the Winery District that were narrower than allowed by the City. The applicant has since agreed to construct all roads, both public and private, to meet the City of Chelan Development Standards.
50. The subject property is not located with a flood control zone or identified critical area.
51. The City is currently in the process of design and future construction of a regional sewer lift station, identified within the Lord Acres Infrastructure Planning Report dated April 2015, that would replace the lift station currently serving The Lookout development.
52. In the event that the Lord Acres regional lift has not been completed and the current sewer lift station reaches maximum capacity, occupancy permits shall not be granted for building permits resulting in an ERU demand in excess of the lift station's maximum capacity, including upsizing with larger pumps; this shall be placed as a note on the final plat.
53. According to the Washington State Department of Transportation (WSDOT), the legislature's 2015 "Connecting Washington" revenue package included \$6.5 Million in final design and construction funding to build a roundabout at the SR 150/NoSeeUm Rd. intersection. The project is anticipated to be completed no later than 2018.
54. The draft project Development Agreement provides that if WSDOT does not complete the No-See-Um Roundabout, when Chelan Lookout LLLP must provide the secondary access. In that case Chelan Lookout LLLP shall provide a temporary secondary access in an alternative location and design approved by the City's Department of Public Works.
55. The preliminary subdivision is proposed to be constructed in phases pursuant to CMC 16.16.060, Phased development, which states: portions of an approved preliminary plat may be processed separately for recording in divisions; provided, that the recording of a division is:
 - 55.1 Pursuant to a development agreement addressing factors raised by the separation of the approved preliminary plat into divisions (CMC16.16.060(A));
 - 55.2 Consistent with the conditions of preliminary plat approval (CMC16.16.060(B)); and
 - 55.3 Will satisfy all the requirements for final approval if subsequent divisions are not recorded, including without limitation the provision of financial sureties guaranteeing the construction of improvements in subsequent divisions if such improvements are necessary for the division (CMC16.16.060(C)).
56. Pursuant to CMC 19.38.010, Development agreements shall accompany and be processed in conjunction with the underlying project permit application, approval or annexation request. The type of project permit application or other approval shall control the type of application.
57. The City of Chelan Department of Planning and Community Development recommended approval of the requested permits, subject to the recommended conditions of approval.
58. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.

59. An open record public hearing after due legal notice was held on February 9, 2016.
60. The entire Planning Staff file was admitted into the record at the public hearing.
61. Appearing on behalf of the applicant were Guy Evans and Kirk Bromiley. Mr. Evans testified as the authorized agent of the applicant. Mr. Bromiley did not provide testimony but did provide legal commentary.
62. The applicant accepted all of the proposed conditions of approval and recommendations from City Staff and agreed with all of the proposed recommended Findings of Fact and Conclusions of Law.
63. Testifying from the public were the following individuals:
 - 63.1 Michael Zoretic. Mr. Zoretic is an attorney representing Whiskey Ranch LLC. Mr. Zoretic submitted Exhibit H, which was admitted into the record. Exhibit H is a February 8, 2016 letter from Kevin Ballard, General Manager Land Development for KLM Construction, Inc. The primary concern from Mr. Zoretic's client was traffic circulation and secondary access to the project area. Their second concern related to the grading component asking where all of the material graded from the site would be stored on site and what protection could be taken so that dust would not be blowing onto his client's property.
64. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
65. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
66. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
67. 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 authority to render this decision.
2. The Hearing Examiner has authority to issue a recommendation to City Council on Type IIIB applications for Planned Development Districts and Development Agreements.
3. The Hearing Examiner has authority to issue a decision for Type IVA applications.

4. The combined application was processed in accordance with procedures outlined in CMC Title 19 – Administration of Development Regulations, Title 14 – Environmental Protection, Title 17– Zoning, and Title 16 – Land Divisions.
5. The project application materials, including the geotechnical engineering, traffic analysis, and preliminary subdivision / utility engineering plans and agency review comments address the applicable provisions for subdivisions found in RCW 58.17.110 and CMC Title 16.
6. Public and agency comments were considered in review of the project.
7. The public use and interest will be served by the approval of the proposed land division, and associated dedications.
8. As conditioned, appropriate provisions are either unnecessary or are made for conditions due to flooding, bad drainage, topography, critical areas, rock formations, or other physical characteristics of the land and other matters affecting the public health, safety and general welfare; for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.
9. As conditioned, the Proposed Project will not cause level of service standards for public facilities and services to fall below the standards as set forth in the City of Chelan Comprehensive Plan.
10. As conditioned, the public facilities and services necessary to support the Proposed Project are adequate and will be available concurrently with the demand for such services.
11. As conditioned, capacities and dimensions of water, sewerage, drainage and street facilities shall be adequate to provide for future needs of other undeveloped properties in the general vicinity.
12. As conditioned, the proposal is in harmony with the surrounding area (CMC 17.52.080(B)(1)).
13. The adequacy of the size of the area to be included in the proposed overlay zone to accommodate the contemplated developments (CMC 17.52.080(B)(2)).
14. The proposed land use could not be achieved without the proposed PDD (CMC 17.52.080(B)(3)).
15. As conditioned, land surrounding the proposed development can be planned in coordination with the proposed development and can be developed so as to be mutually compatible (CMC 17.52.080(B)(4)).
16. As conditioned, utility services and other improvements, existing and proposed, are adequate for the development and are to be completed by the estimated completion date of the PDD (CMC 17.52.080(B)(5)).

17. As conditioned, each phase of the proposed development, as it is planned to be completed, contains adequate parking spaces, recreation spaces, open spaces, and landscaping necessary for creating and sustaining a desired and stable environment (CMC 17.52.080(B)(6)).
18. The project substantially conforms with the purposes and standards prescribed in this chapter and the city's comprehensive plan, along with any other applicable plans and standards that have been adopted by the city pursuant to ordinance or resolution (CMC 17.52.080(B)(7)).
19. The draft project Development Agreement meets the requirements of CMC 19.38.030(A).
20. As conditioned, the proposal substantially complies with the City of Chelan Comprehensive Plan, Zoning Code, Land Division Code, Development Standards, and RCW 58.17.
21. 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, the Hearing Examiner makes the following decision and recommendations.

1. SUB2015-01 is hereby **APPROVED**, subject to the conditions of approval, and also subject to City approval of PDD2015-01 and the Development Agreement between the applicant and the City of Chelan.
2. It is hereby "**RECOMMENDED**" that the City of Chelan approve PUDD2015-01 subject to the above Findings of Facts, Conclusions of Law and Conditions of Approval.
3. While the development agreement between the applicant and the City has not been finalized, the Hearing Examiner hereby recommends that the City of Chelan enter into a Development Agreement that is substantially the same form and contains substantially the same components as drafted and provided to the Hearing Examiner.

Regarding the decision for SUB 2015-01, 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.

The Hearing Examiner's recommendations regarding PDD2015-01 and regarding the Development Agreement are not final decisions and are not subject to appeal at this time.

PDD2015-01
Chelan Lookout LLLP
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IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The Applicant shall obtain all permits required by all federal, state and local agencies with jurisdiction.
3. The Applicant shall comply with all federal, state and local laws and regulations.
4. Construction shall proceed substantially as shown on the application materials on file with City of Chelan, except as modified by conditions below.
5. Preliminary Subdivision approval is conditioned on approval of the Winery Planned Development District and Development Agreement by the City Council.
6. All conditions imposed herein shall be binding on the "Applicant", which terms shall include the owner or owners of the property, heirs, assigns and successors.
7. Construction shall proceed substantially as shown in the application materials on file with the City of Chelan, except as modified by agency conditions.
8. The applicant is responsible for compliance with all applicable local, state, and federal rules and regulations, and must obtain all appropriate permits and approvals.
9. Improvements shall comply with the City of Chelan Development Standards.
10. Engineered Plans shall be submitted, approved, and constructed, prior to submission of a Final Plat for any individual phase of preliminary subdivision.
11. Obtain a grading permit from the Building Department. Comply with the City of Chelan's Municipal Code 14.10-Critical Areas, Grading Ordinance, and identify the location of exported soil.
12. The Geotechnical Engineer shall be retained to determine compliance with the recommendations within the geotechnical report, compaction of soils, and review the installation of the proposed subdivision improvements/grading/and soil supporting foundations.
13. Prior to final plat approval and issuance of building permits:
 1. The Geotechnical Engineer shall provide a letter to the Building Official indicating that the proposed lots are ready for installation of foundations.
 2. Provide an AS-BUILT grading plan.
 3. Obtain final on the subdivision's grading permit.

14. Fire Hydrants, serving the development, shall be in compliance with the International Fire Code.
15. Where appropriate and reasonably feasible based on topography and finished grade, the proposed publically accessible parks and trails, which include but not limited to playground equipment, paths & trails, lawn areas, and lookout areas, will be accessible. The Federal ADA guidelines may be utilized.
16. Open space shall be constructed as complete tracts as shown on the preliminary subdivision drawings or in an amount necessary to serve individual lots created through subdivision phasing process.
17. An NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required.
18. Should any archaeological resources be discovered during grading / construction, all work that would affect the discovered resources must be stopped until proper authorities have been notified and appropriate steps have been take to protect resources in accordance with applicable laws.
19. A note shall be placed on the face of any final plat stating: In the event that the Lord Acres regional lift has not been completed and the current sewer lift station reaches maximum capacity, occupancy permits shall not be granted for building permits resulting in an ERU demand in excess of the lift station capacity.
20. Reference to the Development Agreement's Auditor's File Number shall be placed on the face of any final plat.

Dated this 7th day of March, 2016.

CITY OF CHELAN HEARING EXAMINER



Andrew L. Kottkamp

PDD2015-01
Chelan Lookout LLLP
Page 16 of 16

E-FILED

AGENDA BILL NO. 2016-013A
Exhibit 2

MARCH 25, 2016

KIM MORRISON

CHELAN COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

WHISKEY RANCH, LLC, a Washington limited liability company,

Petitioner,

v.

CITY OF CHELAN, a Washington municipal corporation,

Respondent,

CHELAN LOOKOUT, LLLP, a Washington limited liability limited partnership,

Additional Respondents.

CAUSE NO: **16-2-00271-9**

PETITIONER WHISKEY RANCH, LLC'S LAND USE PETITION AND PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Petitioner Whiskey Ranch, LLC, a Washington limited liability company, for its "Land Use Petition" under the Land Use Petition Act, RCW §43.21C *et seq.*, alleges as follows:

I. PARTIES

1.1 Name and Address of Petitioner. Petitioner Whiskey Ranch, LLC ("**Whiskey Ranch**") is a Washington limited liability company duly organized, validly existing, and in good standing under the laws of the State of Washington. Whiskey Ranch has paid all fees and penalties due the State of Washington under existing law, including, but not limited to,

WHISKEY RANCH, LLC'S LUPA PETITION - 1

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P.O. Box 427
Pateros, WA 98846
Tel. 509.923.9529

1 done in spring/summer, which would coincide with the height of the tourist/recreation
2 period in Chelan.

3 4.13 On March 24, 2016 the City Council considered the Agenda Bill and adopted a
4 motion directing the City Attorney to prepare an ordinance approving the PDD Application
5 and the Development Agreement for the Winery District as recommended by the Examiner's
6 Decision. The City Council has not yet taken final action on an ordinance approving the
7 PDD Application and the Development Agreement. The Memorandum from the
8 Department of Community Development and acting City Attorney attached to the Council's
9 Agenda Bill states that "[s]econdary access will be provided". Without apparently being
10 called out to the Council's attention, the proposed Development Agreement presented to the
11 Council was modified from that presented to the Examiner to require a "temporary
12 emergency/public services access" until a permanent secondary access is provided. Whiskey
13 Ranch contends a "temporary emergency/public services access" does not meet the City's
14 Street Standards for secondary access. In directing the City Attorney to prepare an
15 ordinance for adoption of the PDD Application and the Development Agreement the City
16 Council failed to modify the conditions of approval for either the PDD Application, or the
17 terms and conditions of the Development Agreement, to require a permanent secondary
18 access point to be constructed consistent with the City's Street Standards prior to occupancy
19 of any dwelling units in the Winery District Preliminary Plat approved by the Hearing
20 Examiner.

19 **V. STATEMENT OF ERRORS
20 AND SUPPORTING FACTS**

21 5.1 Error Alleged. State subdivision statutes (RCW §58.17.110(2)) require that:
22 "[a] proposed subdivision . . . shall not be approved unless the city . . . makes written
23 findings that: (a) Appropriate provisions are made for the public health, safety, and general
24 welfare and . . . streets or roads." The Examiner's Decision to approve the Winery District

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1 Preliminary Plat without imposing a condition of approval requiring Chelan Lookout to
2 construct a permanent secondary access point to SR 150 prior to occupancy of any dwelling
3 units within the Winery District is inconsistent with the City's Street Standards and,
4 therefore, constitutes an erroneous interpretation of the law, a clearly erroneous application
5 of the law to the facts, is not supported by substantial evidence, and is outside of the City's
6 authority and jurisdiction pursuant to RCW §36.70C.130(1)(b), (c), (d) and (e). In addition,
7 the City engaged in unlawful procedure and failed to follow a prescribed process pursuant to
8 RCW §36.70C.130(1)(a).

8 5.1.1 Statement of Facts.

9 (a) Whiskey Ranch re-alleges and incorporates by reference each
10 and every allegation contained in Paragraphs 1.1 through 4.12, above.

11 (b) The City's Street Standards require "two separate and
12 approved access roads" for any single-family residential housing development with more
13 than 30 dwelling units.

14 (c) Access to the Winery District is proposed via Bighorn Way,
15 which already serves in excess of 30 dwelling units.

16 (d) The Development Agreement for the Winery District, which
17 governs the Winery District Preliminary Plat, does not require a permanent secondary
18 access to be provided until a total of 100 residential dwelling units between The Lookout and
19 the Winery District are occupied (or 1,000 ADT are generated) contrary to the City's Street
20 Standards.

21 (d) City Street Standards allow for possible deviations in cases
22 where a project is restricted and a second access is not possible because of "topography,
23 waterways, non-negotiable grades or other similar conditions." Street Standards,
24 §5C.090.F.1. However, none of the conditions exist to justify a waiver for the Winery

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1 District Preliminary Plat to only require a permanent secondary access point once there are
2 100 residential units (or 1,000 ADT are generated).

3 (e) City Staff acknowledged at the February 9th hearing that
4 Bighorn Way already fails to comply with the City's Street Standards and that the City's
5 review of the proposal had been presented to the Hearing Examiner before final comments
6 of all pertinent City departments, including the City's' Department of Public Works, had
7 been received and incorporated into the materials submitted to the Hearing Examiner.

8 (f) As the existing road circulation does not comply with current
9 Chelan Code and Street Standards, the conditions of approval the Winery District
10 Preliminary Plat must be revised to require a permanent secondary access point before any
11 residential units are occupied in the Winery District. Otherwise, the proposal does not meet
12 the City Code and Street Standards and therefore violates RCW §58.17.110.

13 5.2 Error Alleged. The DNS issued by the Planning Director pursuant to SEPA is
14 clearly erroneous for failing to adequately address and mitigate the probable significant
15 adverse environmental impacts from the mass grading of the 27 1/2 acre Winery District
16 Property. The Planning Director's issuance of the DNS therefore constitutes and erroneous
17 interpretation of the law, a clearly erroneous application of the law to the facts, is not
18 supported by substantial evidence, and is outside of the City's authority and jurisdiction
19 pursuant to RCW §36.70C.130(1)(b), (c), (d) and (e).

20 5.2.1 Statement of Facts.

21 (a) Whiskey Ranch re-alleges and incorporates by reference each
22 and every allegation contained in Paragraphs 1.1 through 5.1, above.

23 (b) Upon information and belief Chelan Lookout proposes to
24 "mass grade" the Winery District Property, which, according to the applicant's
25 Environmental Checklist will result in approximately 43,000 cubic yards of excess material.

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1 (c) Neither the Environmental Checklist nor the DNS provide any
2 information or mitigation to address probable significant adverse environmental impacts
3 from such mass grading or from the storing of and/or transporting 43,000 cubic yards of
4 excess material or the dust impacts.

5 (d) The issuance of the DNS without information to analyze or
6 mitigate such impacts is clearly erroneous.

7 **VI. REQUEST FOR STAY OF
8 WINERY DISTRICT PRELIMINARY FINAL PLAT**

9 6.1 Whiskey Ranch requests the Court stay the approval of the Winery District
10 Preliminary Plat pursuant to RCW §36.70A.100 pending review of this Land Use Petition.

11 6.1.1 Statement of Facts.

12 (a) Whiskey Ranch re-alleges and incorporates by reference each
13 and every allegation contained in Paragraphs 1.1 through 5.2, above.

14 (b) Upon information and belief, Chelan Lookout intends to
15 immediately begin mass grading and development of the Winery District.

16 (c) Chelan Lookout could complete construction of the
17 improvements and record a final plat for the Winery District prior to final resolution of this
18 Land Use Petition. Approval of the final plat would allow Chelan Lookout to begin
19 construction and sale of homes in the Winery District.

20 6.1.2 Statement of Grounds.

21 (a) Whiskey Ranch is likely to prevail on the merits of their claims
22 for the reasons set forth in Sections 5.1 through 5.2, above.

23 (b) Without staying the Examiner's Decision approving the
24 Winery District Preliminary Plat Whiskey Ranch will suffer irreparable injury if a final plat is
25 recorded, and homes are constructed and occupied in the Winery District without a
26 permanent secondary access being provided and without the probable significant adverse

WHISKEY RANCH, LLC'S LUPA PETITION - 13

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1 environmental impacts of the proposed mass grading having been disclosed, assessed and
2 mitigated. In approving the Winery District Preliminary Plat the Examiner did not require
3 Chelan Lookout to provide a permanent secondary access point to SR 150 as a condition of
4 occupancy for any units within the Winery District Preliminary Plat. A stay of the approval
5 for the Winery District Preliminary Plat is therefore necessary to maintain the status quo in
6 the event the Court grants Whiskey Ranch's LUPA Petition.

7 (c) Staying the Hearing Examiner's approval of the Winery
8 District Preliminary Plat will have no impact on the City.

9 (d) Whiskey Ranch's request for stay has been made in a timely
10 manner. Whiskey Ranch has promptly filed this Land Use Petition and requested a stay
11 following the Examiner's Decision approving the Winery District Preliminary Plat. Whiskey
12 Ranch has requested a stay of the Winery District Preliminary Plat at the earliest possible
13 time to put potential purchasers of Winery District homes on notice of the pending LUPA
14 Petition potentially affecting their ownership interests.

14 **VIII. RELIEF REQUESTED**

15 Whiskey Ranch prays for the following relief:

16 1. Enter an order requiring the City to submit to this Court a certified copy of
17 the record regarding the Planning Director's DNS and the Examiner's Decision approving
18 the Winery District Preliminary Plat for judicial review pursuant to LUPA;

19 2. Enter an order to supplement the record regarding the Examiner's Decision
20 as may be warranted pursuant to RCW §36.70C.120.

21 3. Enter a declaratory judgment in favor of Whiskey Ranch, concluding that the
22 Planning Director's issuance of the DNS and the Hearing Examiner's Decision to approve
23 the Winery District Preliminary Plat were clearly erroneous, an erroneous application of the
24 law, not supported by substantial evidence in the record, and/or outside the City's
jurisdiction;

WHISKEY RANCH, LLC'S LUPA PETITION - 14

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- 4. Enter a stay of the Winery District Preliminary Plat pending the Court's consideration of Whiskey Ranch's LUPA Petition;
 - 5. Award Whiskey Ranch its allowable attorneys' fees, costs and disbursements;
- and
- 6. Enter such other and further relief as the Court deems appropriate.

DATED this 25th day of March, 2016.

ZORETIC LAW, PLLC



By _____
 Michael T. Zoretic, WSBA #21221
 Zoretic Law, PLLC
 215 Pateros Mall
 P.O. Box 427
 Pateros, WA 98846
 509.923.9529 (tel)
 mike@zoreticlaw.com (email)
 Attorneys for Petitioner Whiskey Ranch, LLC

WHISKEY RANCH, LLC'S LUPA PETITION - 15

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 P.O. Box 427
 Pateros, WA 98846
 Tel. 509.923.9529

AGENDA BILL NO. 2016-013A	
Exhibits	
Exhibit 2	
A	Application Materials
B	Notice of Application
C	Notice of Public Hearing
D	Public Comments
E	Agency Comments
F	SEPA determination
G	Development Agreement

**CITY OF CHELAN
DEPARTMENT OF PLANNING AND
COMMUNITY DEVELOPMENT
STAFF REPORT**

<p>IN THE MATTER OF</p> <p>PDD2015-01</p> <p>SUB2015-01</p> <p>SEPA2015-01</p> <p><i>DEVELOPMENT AGREEMENT</i></p> <p>Chelan Lookout LLLP</p> <p>Winery Planned Development District</p>	<p>)</p>	<p>STAFF RECOMMENDED</p> <p>FINDINGS OF FACT,</p> <p>CONCLUSIONS OF LAW,</p> <p>AND DECISION</p> <p>Staff Contact:</p> <p>John Ajax</p> <p>Associate Planner</p>
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OVERVIEW

The following staff report involves three project permit applications submitted by Chelan Lookout LLC. The three applications, while subject to their own specific approval criteria, are being considered holistically as they are co-dependent.

First is the application for preliminary and final development plan approval of a 27.5 acre Planned Development District, to be called the “Winery Planned Development District (PDD)”. The project is located immediately east of the existing 63 acre Lookout Planned Development District, formerly known as Granite Ridge. Approval of a PDD shall modify and supersede all regulations of the underlying zoning district.

Second, is the application for a preliminary subdivision for 137 residential lots ranging in sizes from 3,600 square feet to 9,109 square feet. The preliminary subdivision is proposed to be constructed in phases, with each individual phase processed through the final plat process.

Third, a Development Agreement between the City and Chelan Lookout LLC establishes and vests land uses, dimensional standards, project phasing, utilities and associated fees, transportation and secondary access, water rights, parking management, open space and maintenance, trails / pedestrian connections, and affordable housing contributions. The Development Agreement includes both the existing Lookout PDD and proposed Winery PDD.

The proposed Winery Planned Development District and Development Agreement is processed as a Type IIIB project permit application, where the Hearing Examiner conducts an open record hearing and makes a recommendation to the City Council for a final decision. The Preliminary Subdivision is processed as a Type IVA project permit application, where the Hearing Examiner

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Chelan Lookout LLC.
Winery District

44. A Geotechnical Engineering Evaluation, prepared by Nelson Geotechnical Associates, Inc., dated, January 27, 2015, states, "It is our opinion, from an engineering geologic standpoint, that the site is compatible with the proposed expanded residential development."
45. Extension of the public right-of-way and development of private streets within the project area is designed to allow future development and access of adjoining properties.
46. The Lookout originally applied to construct roads in the Winery District that were more narrow than allowed by the City; the applicant has since agreed to construct all roads, both public and private, to meet the City of Chelan Development Standards..
47. The subject property is not located with a flood control zone or identified critical area.
48. The City is currently in the process of design and future construction of a regional sewer lift station, identified within the Lord Acres Infrastructure Planning Report dated April 2015, that would replace the lift station currently serving The Lookout development.

In the event that the Lord Acres regional lift has not been completed and the current sewer lift station reaches maximum capacity, occupancy permits shall not be granted for building permits resulting in an ERU demand in excess of the lift station capacity; this shall be placed as a note on the final plat.

49. According to the Washington State Department of Transportation (WSDOT), the legislature's 2015 "Connecting Washington" revenue package included \$6.5 Million in final design and construction funding to build a roundabout at the SR 150/NoSeeUm Rd. intersection. The project is anticipated to be completed no later than 2018.
50. The project Development Agreement identifies if WSDOT does not complete the No-See-Um Roundabout when Chelan Lookout must provide the secondary access, Chelan Lookout shall provide a temporary secondary access in an alternative location and design approved by the City's Department of Public Works.
51. The preliminary subdivision is proposed to be constructed in phases pursuant to CMC 16.16.060, Phased development, which states: portions of an approved preliminary plat may be processed separately for recording in divisions; provided, that the recording of a division is:
 - 51.1. Pursuant to a development agreement addressing factors raised by the separation of the approved preliminary plat into divisions (CMC16.16.060(A));
 - 51.2. Consistent with the conditions of preliminary plat approval (CMC16.16.060(B)); and
 - 51.3. Will satisfy all the requirements for final approval if subsequent divisions are not recorded, including without limitation the provision of financial sureties guaranteeing the construction of improvements in subsequent divisions if such improvements are necessary for the division (CMC16.16.060(C)).
52. Pursuant to CMC 19.38.010, Development agreements shall accompany and be processed in conjunction with the underlying project permit application, approval or annexation request. The type of project permit application or other approval shall control the type of application.

53. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

RECOMMENDED CONCLUSIONS OF LAW

1. The Hearing Examiner has authority to issue a recommendation to City Council on Type IIIB applications for Planned Development Districts and Development Agreements.
2. The Hearing Examiner has authority to issue a decision for Type IVA applications.
3. The combined application was processed in accordance with procedures outlined in CMC Title 19 – Administration of Development Regulations, Title 14 – Environmental Protection, Title 17– Zoning, and Title 16 – Land Divisions.
4. The project application materials, including the geotechnical engineering, traffic analysis, and preliminary subdivision / utility engineering plans and agency review comments address the applicable provisions for subdivisions found in RCW 58.17.110 and CMC Title 16.
5. Public and agency comments were considered in review of the project.
6. The public use and interest will be served by the approval of the proposed land division, and associated dedications.
7. As conditioned, appropriate provisions are either unnecessary or are made for conditions due to flooding, bad drainage, topography, critical areas, rock formations, or other physical characteristics of the land and other matters affecting the public health, safety and general welfare; for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.
8. As conditioned, the Proposed Project will not cause level of service standards for public facilities and services to fall below the standards as set forth in the City of Chelan Comprehensive Plan.
9. As conditioned, the public facilities and services necessary to support the Proposed Project are adequate and will be available concurrently with the demand for such services.
10. As conditioned, capacities and dimensions of water, sewerage, drainage and street facilities shall be adequate to provide for future needs of other undeveloped properties in the general vicinity.
11. As conditioned, the proposal is in harmony with the surrounding area (CMC 17.52.080(B)(1)).
12. The adequacy of the size of the area to be included in the proposed overlay zone to accommodate the contemplated developments (CMC 17.52.080(B)(2)).

13. The proposed land use could not be achieved without the proposed PDD (CMC 17.52.080(B)(3)).
14. As conditioned, land surrounding the proposed development can be planned in coordination with the proposed development and can be developed so as to be mutually compatible (CMC 17.52.080(B)(4)).
15. As conditioned, utility services and other improvements, existing and proposed, are adequate for the development and are to be completed by the estimated completion date of the PDD (CMC 17.52.080(B)(5)).
16. As conditioned, each phase of the proposed development, as it is planned to be completed, contains adequate parking spaces, recreation spaces, open spaces, and landscaping necessary for creating and sustaining a desired and stable environment (CMC 17.52.080(B)(6)).
17. The project substantially conforms with the purposes and standards prescribed in this chapter and the city's comprehensive plan, along with any other applicable plans and standards that have been adopted by the city pursuant to ordinance or resolution (CMC 17.52.080(B)(7)).
18. The project Development Agreement meets the requirements of CMC 19.38.030(A).
- 19.
20. As conditioned, the proposal substantially complies with the City of Chelan Comprehensive Plan, Zoning Code, Land Division Code, Development Standards, and RCW 58.17.
21. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

Based in the suggested Findings of Fact and Conclusion of Law, Staff recommends ***APPROVAL*** of PDD2015-01, SUB2015-01, and Development Agreement, for recommendation by the Hearing Examiner to City Council subject to the following conditions.

RECOMMENDED CONDITIONS OF APPROVAL:

1. Preliminary Subdivision approval is conditioned on approval of the Winery Planned Development District and Development Agreement by the City Council.
2. All conditions imposed herein shall be binding on the "Applicant", which terms shall include the owner or owners of the property, heirs, assigns and successors.
3. Construction shall proceed substantially as shown in the application materials on file with the City of Chelan, except as modified by agency conditions.
4. The applicant is responsible for compliance with all applicable local, state, and federal rules and regulations, and must obtain all appropriate permits and approvals.
5. Improvements shall comply with the City of Chelan Development Standards.
6. Engineered Plans shall be submitted, approved, and constructed, prior to submission of a Final Plat for any individual phase of preliminary subdivision.

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Winery District
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7. Obtain a grading permit from the Building Department. Comply with the City of Chelan's Municipal Code 14.10-Critical Areas, Grading Ordinance, and identify the location of exported soil.
8. The Geotechnical Engineer shall be retained to determine compliance with the recommendations within the geotechnical report, compaction of soils, and review the installation of the proposed subdivision improvements/grading/and soil supporting foundations.
9. Prior to final plat approval and issuance of building permits –
 1. The Geotechnical Engineer shall provide a letter to the Building Official indicating that the proposed lots are ready for installation of foundations.
 2. Provide an AS-BUILT grading plan.
 3. Obtain final on the subdivision's grading permit.
10. Fire Hydrants, serving the development, shall be in compliance with the International Fire Code.
11. The proposed parks and trails shall be accessible which shall include but not limited to the playground equipment, paths & trails, lawn areas, parking, & lookout areas. The Federal Guidelines for ADA may be utilized.
12. Open space shall be constructed as complete tracts as shown on the preliminary subdivision drawings or in an amount necessary to serve individual lots created through subdivision phasing process.
13. An NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required.
14. Should any archaeological resources be discovered during grading / construction, all work that would affect the discovered resources must be stopped until proper authorities have been notified and appropriate steps have been taken to protect resources in accordance with applicable laws.
15. A note shall be placed on the face of any final plat stating: In the event that the Lord Acres regional lift has not been completed and the current sewer lift station reaches maximum capacity, occupancy permits shall not be granted for building permits resulting in an ERU demand in excess of the lift station capacity.
16. Reference to the Development Agreement's Auditor's File Number shall be placed on the face of any final plat.

J101.1 Scope. The provisions of this chapter apply to grading, excavation and earthwork construction, including fills and embankments. Where conflicts occur between the technical requirements of this chapter and the geotechnical report, the geotechnical report shall govern.

J101.2 Flood hazard areas. The provisions of this chapter shall not apply to grading, excavation and earthwork construction, including fills and embankments, in *floodways* within *flood hazard areas* established in Section 1612.3 or in *flood hazard areas* where design *flood* elevations are specified but floodways have not been designated, unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed work will not result in any increase in the level of the base flood.

SECTION J102 DEFINITIONS

J102.1 Definitions. The following words and terms shall, for the purposes of this appendix, have the meanings shown herein. Refer to Chapter 2 of the *International Building Code* for general definitions.

BENCH. A relatively level step excavated into earth material on which fill is to be placed.

COMPACTION. The densification of a fill by mechanical means.

CUT. See "Excavation."

DOWN DRAIN. A device for collecting water from a swale or ditch located on or above a slope, and safely delivering it to an approved drainage facility.

EROSION. The wearing away of the ground surface as a result of the movement of wind, water or ice.

EXCAVATION. The removal of earth material by artificial means, also referred to as a cut.

FILL. Deposition of earth materials by artificial means.

GRADE. The vertical location of the ground surface.

GRADE, EXISTING. The grade prior to grading.

GRADE, FINISHED. The grade of the site at the conclusion of all grading efforts.

GRADING. An excavation or fill or combination thereof.

KEY. A compacted fill placed in a trench excavated in earth material beneath the toe of a slope.

SLOPE. An inclined surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

SECTION J103 PERMITS REQUIRED

J103.1 Permits required. Except as exempted in Section J103.2, no grading shall be performed without first having obtained a *permit* therefor from the *building official*. A grading *permit* does not include the construction of retaining walls or other structures.

J103.2 Exemptions. A grading *permit* shall not be required for the following:

1. Grading in an isolated, self-contained area, provided there is no danger to the public, and that such grading will not adversely affect adjoining properties.
2. Excavation for construction of a structure permitted under this code.
3. Cemetery graves.
4. Refuse disposal sites controlled by other regulations.
5. Excavations for wells, or trenches for utilities.
6. Mining, quarrying, excavating, processing or stockpiling rock, sand, gravel, aggregate or clay controlled by other regulations, provided such operations do not affect the lateral support of, or significantly increase stresses in, soil on adjoining properties.
7. Exploratory excavations performed under the direction of a registered design professional.

Exemption from the permit requirements of this appendix shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

SECTION J104 PERMIT APPLICATION AND SUBMITTALS

J104.1 Submittal requirements. In addition to the provisions of Section 105.3, the applicant shall state the estimated quantities of excavation and fill.

J104.2 Site plan requirements. In addition to the provisions of Section 107, a grading plan shall show the existing grade and finished grade in contour intervals of sufficient clarity to indicate the nature and extent of the work and show in detail that it complies with the requirements of this code. The plans shall show the existing grade on adjoining properties in sufficient detail to identify how grade changes will conform to the requirements of this code.

4. Where necessary, slope stability studies, and recommendations and conclusions regarding site geology.

Exception: A geotechnical report is not required where the building code official determines that the nature of the work applied for is such that a report is not necessary.

J104.4 Liquefaction study. For sites with mapped maximum considered earthquake spectral response accelerations at short periods (S_s) greater than 0.5g as determined by Section 1613, a study of the liquefaction potential of the site shall be provided, and the recommendations incorporated in the plans.

Exception: A liquefaction study is not required where the building official determines from established local data that the liquefaction potential is low.

SECTION J105 INSPECTIONS

J105.1 General. Inspections shall be governed by Section 109 of this code.

J105.2 Special inspections. The special inspection requirements of Section 1704.7 shall apply to work performed under a grading permit where required by the *building official*.

SECTION J106 EXCAVATIONS

J106.1 Maximum slope. The slope of cut surfaces shall be no steeper than is safe for the intended use, and shall be no steeper than two units horizontal to one unit vertical (50-percent slope) unless the owner or authorized agent furnishes a geotechnical report justifying a steeper slope.

Exceptions:

1. A cut surface shall be permitted to be at a slope of 1.5 units horizontal to one unit vertical (67-percent slope) provided that all of the following are met:
 - 1.1. It is not intended to support structures or surcharges.
 - 1.2. It is adequately protected against erosion.
 - 1.3. It is no more than 8 feet (2438 mm) in height.
 - 1.4. It is approved by the building code official.
 - 1.5. Ground water is not encountered.
2. A cut surface in bedrock shall be permitted to be at a slope of one unit horizontal to one unit vertical (100-percent slope).

vide a bond with the fill material.

J107.3 Benching. Where existing grade is at a slope steeper than five units horizontal to one unit vertical (20-percent slope) and the depth of the fill exceeds 5 feet (1524 mm) benching shall be provided in accordance with Figure J107.3. A key shall be provided which is at least 10 feet (3048 mm) in width and 2 feet (610 mm) in depth.

J107.4 Fill material. Fill material shall not include organic, frozen or other deleterious materials. No rock or similar irreducible material greater than 12 inches (305 mm) in any dimension shall be included in fills.

J107.5 Compaction. All fill material shall be compacted to 90 percent of maximum density as determined by ASTM D 1557, Modified Proctor, in lifts not exceeding 12 inches (305 mm) in depth.

J107.6 Maximum slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes steeper than two units horizontal to one unit vertical (50-percent slope) shall be justified by a geotechnical report or engineering data.

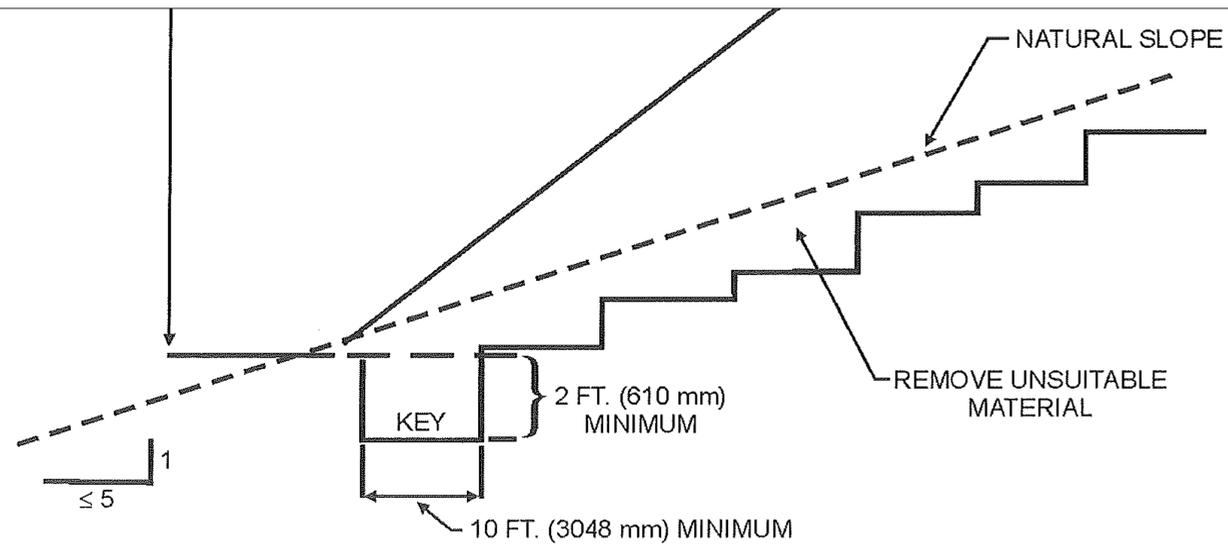
SECTION J108 SETBACKS

J108.1 General. Cut and fill slopes shall be set back from the property lines in accordance with this section. Setback dimensions shall be measured perpendicular to the property line and shall be as shown in Figure J108.1, unless substantiating data is submitted justifying reduced setbacks.

J108.2 Top of slope. The setback at the top of a cut slope shall not be less than that shown in Figure J108.1, or than is required to accommodate any required interceptor drains, whichever is greater.

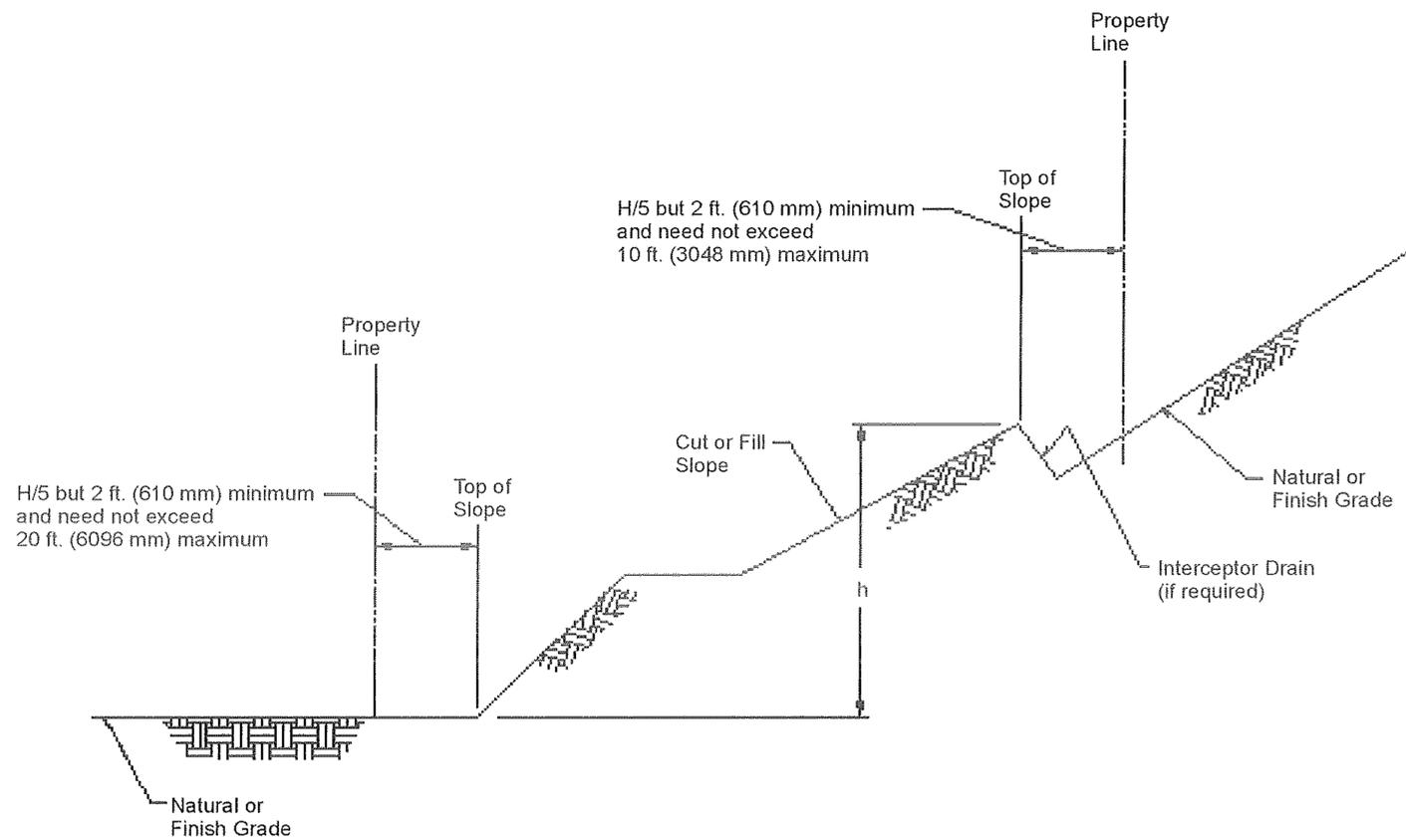
J108.3 Slope protection. Where required to protect adjacent properties at the toe of a slope from adverse effects of the grading, additional protection, approved by the *building official*, shall be included. Such protection may include but shall not be limited to:

1. Setbacks greater than those required by Figure J108.1.
2. Provisions for retaining walls or similar construction.
3. Erosion protection of the fill slopes.
4. Provision for the control of surface waters.



For SI: 1 foot = 304.8 mm.

**FIGURE J107.3
BENCHING DETAILS**



For SI: 1 foot = 304.8 mm.

**FIGURE J108.1
DRAINAGE DIMENSIONS**

J109.2 Terraces. Terraces at least 6 feet (1829 mm) in width shall be established at not more than 30-foot (9144 mm) vertical intervals on all cut or fill slopes to control surface drainage and debris. Suitable access shall be provided to allow for cleaning and maintenance.

Where more than two terraces are required, one terrace, located at approximately mid-height, shall be at least 12 feet (3658 mm) in width.

Swales or ditches shall be provided on terraces. They shall have a minimum gradient of 20 horizontal to 1 vertical (5 percent) and shall be paved with concrete not less than 3 inches (76 mm) in thickness, or with other materials suitable to the application. They shall have a minimum depth of 12 inches (305 mm) and a minimum width of 5 feet (1524 mm).

A single run of swale or ditch shall not collect runoff from a tributary area exceeding 13,500 square feet (1256 m²) (projected) without discharging into a down drain.

J109.3 Interceptor drains. Interceptor drains shall be installed along the top of cut slopes receiving drainage from a tributary width greater than 40 feet (12 192 mm), measured horizontally. They shall have a minimum depth of 1 foot (305 mm) and a minimum width of 3 feet (915 mm). The slope shall be approved by the *building official*, but shall not be less than 50 horizontal to 1 vertical (2 percent). The drain shall be paved with concrete not less than 3 inches (76 mm) in thickness, or by other materials suitable to the application. Discharge from the drain shall be accomplished in a manner to prevent erosion and shall be approved by the building official.

J109.4 Drainage across property lines. Drainage across property lines shall not exceed that which existed prior to grading. Excess or concentrated drainage shall be contained on site or directed to an approved drainage facility. Erosion of the ground in the area of discharge shall be prevented by installation of nonerosive down drains or other devices.

SECTION J110 EROSION CONTROL

J110.1 General. The faces of cut and fill slopes shall be prepared and maintained to control erosion. This control shall be permitted to consist of effective planting.

Exception: Erosion control measures need not be provided on cut slopes not subject to erosion due to the erosion-resistant character of the materials.

Erosion control for the slopes shall be installed as soon as practicable and prior to calling for final inspection.

RECEIVED VIA EMAIL 1/28/16
COMMENTS ON SEPA DNS

January 28, 2016

Mr. Craig Gildroy
Community Development Director
Mr. John Ajax
Associate Planner
City of Chelan
P.O. Box 1669
135 E. Johnson AVE
Chelan, WA 98816

Re: Chelan Lookout, LLC PDD2015-01/SUB2015-01/SEPA2015-01

Dear Mr. Gildroy & Mr. Ajax,

This letter is submitted on behalf of Whiskey Ranch, LLC. We respectfully submit these comments on the above-referenced application for subdivision and Planned Development District (PDD) approval, and the SEPA threshold determination (a DNS) issued by the City, for the property that lies east of "The Lookout". The proposed subdivision/PDD is commonly referred to as the "Winery District". Additionally, as a neighboring property owner (owning the property west of The Lookout) we ask to be listed as a party of record on all future submittals, actions and decisions regarding this project.

Although we are strongly supportive of appropriate planned developments that can lead to quality growth for the Chelan community, we have several significant concerns regarding potential negative effects of the proposed project on the health, safety and welfare.

The applicant's SEPA checklist indicates a potential 10 to 15 year buildout of a high density project, but fails to address how this significant change to the existing community will be mitigated. For example, sewer and water availability -- a long-standing issue and concern for the service area in which this project is located -- appears to have been little consideration in the environment checklist.

Another significant concern is traffic; primarily traffic flow for the homes to/from a single access point off of SR 150. The SEPA checklist states that: "Bighorn Way is planned for extension as a public street through this site in an alignment to permit the eventual looping back to SR 150 when the adjacent property is developed." What if this connection never happens? The existing road already has 50+ homes on it, and another 43 home sites are proposed to utilize the existing road under the project applied for under SUB2014-03 (The Lookout Hillside). Adding yet another 137 new home sites to this road from the Winery District creates a dangerous situation and a safety hazard to the existing community, particularly for emergency vehicle access.

We hope these issues and concerns will be taken into account and addressed in the City's review of the project to ensure these issues are adequately addressed and mitigated.

If I can be of any further assistance, please don't hesitate to contact me at (425) 778-4111 or via email at Kevin@village-life.net.

//

Sincerely,

Kevin Ballard
General Manager Land Development



MAR 2 - DECISION BY HEARING EXAMINER

February 8, 2016

Hearing Examiner
City of Chelan
P.O. Box 1669
135 E. Johnson AVE
Chelan, WA 98816

Re: Chelan Lookout, LLC PDD2015-01/SUB2015-01/SEPA2015-01

Dear Mr. Hearing Examiner,

This letter is submitted on behalf of Whiskey Ranch, LLC ("Whiskey Ranch"). We respectfully submit these comments on the above-referenced application for preliminary plat and Planned Development District ("PDD") approval, the SEPA threshold determination (a "DNS") issued by the City, and the proposed development agreement, for the property that lies east of "The Lookout". The proposed preliminary plat/PDD is commonly referred to as the "Winery District".

Although we are strongly supportive of appropriate planned developments that can lead to quality growth for the Chelan community, we believe that this project has two significant issues that have not been adequately addressed. These issues render the City's DNS clearly erroneous and demonstrate that the project as proposed is inconsistent with applicable PDD criteria in the City's municipal code and state subdivision statutes. Whiskey Ranch respectfully requests you reject this premature plan and disapprove it based on it not meeting the safety and compatibility requirements set forth in the City's Code and Street Standards.

WILL
BE
ADDRESSED
IN THE
DEVELOP-
MENT
AGREEMENT

Whiskey Ranch's first concern is that the proposal will exacerbate an already nonconforming and dangerous traffic circulation system onto SR 150. This proposal has as its primary traffic flow for its initial phase to and from a single, existing access point off of SR 150 from the existing "Lookout" development. Indeed, the SEPA checklist states that: "Bighorn Way is planned for extension as a public street through this site in an alignment to permit the eventual looping back to SR 150 when the adjacent property is developed." (Emphasis added.) Bighorn Way already serves 50+ lots from the original Granite Ridge plat (now proposed to be known as the "Hilltop District" of the Lookout). But the City's Street Standards provide that:

"[d]evelopments consisting of single-family residential housing where the number of dwelling units exceeds 30 shall provide two separate and approved access roads."

City Standards, Chapter Five – Street Standards, at p. 5-19 (emphasis added.)¹ The Staff Report and proposed development agreement contemplate that the second access point off of SR 150

¹ Whiskey Ranch notes that the City's Street Standards were revised in January 2015 shortly before the present application was submitted. The former Street Standards prohibited cul-de-sacs serving more than 40 residential units. Without a second access to SR 150, Whiskey Ranch believes the road system in the Winery District connecting to the roads in The Lookout is nothing more than one large cul-de-sac. Regardless of whether the road system is a cul-de-sac, the current iteration of the Street Standards expressly require a second access point when there are more than 30 single-family units.

would only be required once 100 residential units are developed. As the existing single family unit count is already greater than 30, Whiskey Ranch fails to understand how the proposed PDD/preliminary plat for the Winery District can be approved without requiring a second access point before any further housing units are developed.

The City Code does allow for possible deviations in cases where when a project is restricted and a second access is not possible because of "topography, waterways, non-negotiable grades or other similar conditions." However, it does not appear any of these conditions exist to justify a waiver to only require a secondary access point once there are 100 residential units. Whiskey Ranch believes this issue renders the proposal inconsistent with the applicable PDD requirements (see CMC Section 17.52.080(B)(2) & (5)), and state subdivision statutes (see RCW 58.17.110). As the existing road circulation does not comply with current Chelan Code and Street Standards, the proposed conditions of approval recommended for the PDD and preliminary plat approval for the Winery District, and the proposed development agreement, must be revised to require a second access point before any residential units are constructed in the Winery District. Otherwise, the proposal does not meet the City Code and Street Standards and therefore should be disapproved until compliance is demonstrated.

Whiskey Ranch's second concern relates to proposed grading. The applicant's proposal outlines a high density residential and commercial project with proposed construction to occur over the next 10 to 20 years (the proposed development agreement has a 20-year term). The project as proposed does not provide adequate analysis to allow for a true understanding of the project's environment impact, particularly as it relates to grading. The proposed project phasing is deceptive. While the project will be built in phases, it appears the applicant intends to "mass grade" the entire site as part of Phase I. The SEPA checklist indicates up to 43,000 cubic yards of dirt will remain after the mass grading of the entire site is complete, and indicates the excess material will be used for "Future Home Building". This excess material is greater than the equivalent of 2,000 truck loads of material. The SEPA Checklist however provides no analysis regarding the impacts of this mass grading let alone identifying potential mitigation from mass grading. Indeed, where/how will this excess material be stored? Will any be exported off-site? Because of the significant quantity of dirt to be moved, placed or potentially transported off-site greater analysis should have been provided in order to fully assess the project's impacts and the potential need for mitigation.

GRADING PERMIT conditions

This is particularly a concern as we expect site grading would be done in spring/summer coinciding with the height of the tourist/recreation period in Chelan. The movement of this amount of material creates more than just dust. What portion of this material will be transported on public roadways and what impacts to the public have been adequately considered? How will the material be stored to ensure there will not be adverse erosion issues potentially causing water quality impacts? This information is not provided, nor is potential mitigation for the significant mass grading. This deficiency renders the DNS clearly erroneous. Moreover, without adequately addressing the proposed mass grading of the site, Whiskey Ranch believes the Hearing Examiner cannot find either that the proposal is in "harmony with the surrounding area" under the PDD criteria (CMC Sec. 17.52.080B.1), or that "[a]ppropriate provisions are made for the public health safety, and general welfare" under the state subdivision statutes (RCW 58.17.110).

PROCESS

We hope these issues and concerns will be taken into account and addressed in the Hearing Examiner's review of the project to ensure these issues are adequately addressed and mitigated.

EXHIBIT F
THE PDD OVERALL

If I can be of any further assistance, please don't hesitate to contact me at (425) 778-4111 or via email at Kevin@village-life.net.

Sincerely,



Kevin Ballard
General Manager Land Development



February 9, 2016

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1 MR. NIELSON: Sam Nielson. I'm the
2 Parametrix civil engineer for the project.

3 THE HEARING EXAMINER: How do you spell
4 your last name, sir?

5 MR. NIELSON: N-i-e-l-s-o-n.

6 THE HEARING EXAMINER: -s-o-n?

7 MR. NIELSON: -s-o-n.

8 THE HEARING EXAMINER: All right.

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EXHIBIT G

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SEATTLE DEPOSITION REPORTERS, LLC

www.seadep.com

206.622.6661 * 800.657.1110

FAX: 206.622.6236

February 9, 2016

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* * *

SAM NIELSON: herein, having been
 duly sworn by the Hearing
 Examiner, testified as follows:

* * *

E-X-A-M-I-N-A-T-I-O-N

Q. (By The Hearing Examiner.) And again, who
are you with?

A. Parametrix.

Q. What are they?

A. A civil engineering company.

Q. And you've worked on this project?

A. I have. I prepared all the preliminary
documents, all the civil and utility documents,
including the grading plan.

Q. All right, then. What would you like to tell
us?

A. So the, just to bring up the 43,000 cubic
yards of earthwork that's going to happen. It's all
going to be kept off site. It's really just being
pushed from one area to another to level off the site
to make it more desirable to develop, to make it more
able to be developed.

And then as far as stockpiling and those

EXHIBIT G

SEATTLE DEPOSITION REPORTERS, LLC

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1 things, everything is going to be placed in a location
2 as kind of a final grade with the oversight of a
3 geotechnical engineer for Staff comments.

4 And as Mr. Ajax stated, everything will be
5 done within an NPDES permit, which requires all the
6 erosion control, the dust control, and all those
7 things per State standards.

8 THE HEARING EXAMINER: All right. Is
9 there anything else from -- Mr. Nielson's coming back?

10 A. Just one last comment, just to clarify a
11 little bit clearer, is that all the earthwork is going
12 to be pushed from one area to another. There will be
13 no mountain. It will all be put to finish grade where
14 the houses will be built.

15 Q. So how long, how long do you anticipate this
16 43,000 -- I guess I'm not -- give me a little bit more
17 detail. It's going to be stored but it's going to
18 be -- after it's placed, is it then going to be moved
19 around one or two or more times, or --

20 A. I think all of it will be occurring at one
21 time, so it would be one mass grading exercise to
22 reduce the amount of, you know, effect on the
23 neighbors and everything else.

24 Q. And then it's going to be stored in the
25 residential building areas?

EXHIBIT G

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1 A. I don't think it's stored. It will be
2 actually just cut from one area and then placed in the
3 other area --

4 Q. All right.

5 A. -- and used as structural fill.

6 Q. Okay. All right. I see. I get it now.
7 Thank you very much.

8 Just a second, Mr. Evans. All right,
9 Mr. Evans?

10 E-X-A-M-I-N-A-T-I-O-N

11 Q. (By The Hearing Examiner.) Mr. Evans,
12 anything further?

13 A. Just to piggyback on Mr. Nielson's comments
14 here to make it crystal clear. So basically the cut
15 is in this area right here (indicating), which is the
16 high point, and this is shown in the development, or
17 the grading plan that is a part of the subdivision
18 application. So you know, there'll be scrapers and
19 bulldozers just taking the dirt from here
20 (indicating), pushing it down into this area right
21 here (indicating).

22 Currently, if you were to be on this
23 existing back alleyway, there's a significant steep
24 grade down to a lower elevation, so that hollow, if
25 you will, will be filled by the excess that's coming

EXHIBIT G

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1 from the top of this (indicating).

2 There will be the topsoil that will be
3 pushed off in the short term to basically preserve
4 that so we can get down to the structural, push it
5 over, and then the top soil would be redistributed.

6 But per the existing comments, you know,
7 that temporary topsoil, you know, would be maintained
8 and cared for per the requirements.

9 Q. And when it hits its final resting place,
10 then you have the compaction and then you have all
11 that's necessary to build on top of it; is that
12 correct?

13 A. Exactly. And then significantly, since we
14 will only be, you know, initially providing utilities
15 to a subset of the total PDD area, the disturbed
16 ground will be seeded and irrigated, and that's where
17 there's just a, kind of a mutual alignment of interest
18 between surrounding neighbors and the project, insofar
19 as we want both our guests, owners, and new clients to
20 come to an environment that's pleasing and hospitable.
21 And so, you know, we take good efforts to make sure
22 that the disturbed soils are, you know, like I say,
23 reseeded and irrigated so that it's a stable and
24 inviting environment.

25 THE HEARING EXAMINER: All right. Thank

APPENDIX D

D103.5 Fire apparatus access road gates. Gates securing the fire apparatus access roads shall comply with all of the following criteria:

1. The minimum gate width shall be 20 feet (6096 mm).
2. Gates shall be of the swinging or sliding type.
3. Construction of gates shall be of materials that allow manual operation by one *person*.
4. Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.
5. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices shall be *approved* by the *fire code official*.
6. Manual opening gates shall not be locked with a padlock or chain and padlock unless they are capable of being opened by means of forcible entry tools or when a key box containing the key(s) to the lock is installed at the gate location.
7. Locking device specifications shall be submitted for approval by the *fire code official*.
8. Electric gate operators, where provided, shall be *listed* in accordance with UL 325.
9. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200.

D103.6 Signs. Where required by the *fire code official*, fire apparatus access roads shall be marked with permanent NO PARKING—FIRE LANE signs complying with Figure D103.6. Signs shall have a minimum dimension of 12 inches (305 mm) wide by 18 inches (457 mm) high and have red letters on a white reflective background. Signs shall be posted on one or both sides of the fire apparatus road as required by Section D103.6.1 or D103.6.2.

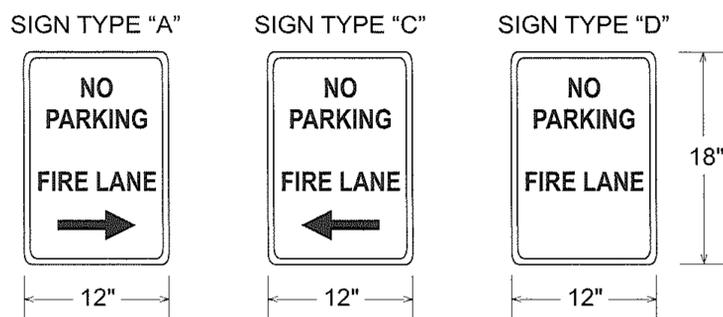


FIGURE D103.6
FIRE LANE SIGNS

D103.6.1 Roads 20 to 26 feet in width. Fire lane signs as specified in Section D103.6 shall be posted on both sides of fire apparatus access roads that are 20 to 26 feet wide (6096 to 7925 mm).

D103.6.2 Roads more than 26 feet in width. Fire lane signs as specified in Section D103.6 shall be posted on one side of fire apparatus access roads more than 26 feet wide (7925 mm) and less than 32 feet wide (9754 mm).

**SECTION D104
COMMERCIAL AND INDUSTRIAL DEVELOPMENTS**

D104.1 Buildings exceeding three stories or 30 feet in height. Buildings or facilities exceeding 30 feet (9144 mm) or three stories in height shall have at least two means of fire apparatus access for each structure.

D104.2 Buildings exceeding 62,000 square feet in area. Buildings or facilities having a gross *building area* of more than 62,000 square feet (5760 m²) shall be provided with two separate and *approved* fire apparatus access roads.

Exception: Projects having a gross *building area* of up to 124,000 square feet (11 520 m²) that have a single *approved* fire apparatus access road when all buildings are equipped throughout with *approved automatic sprinkler systems*.

D104.3 Remoteness. Where two fire apparatus access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the lot or area to be served, measured in a straight line between accesses.

**SECTION D105
AERIAL FIRE APPARATUS ACCESS ROADS**

D105.1 Where required. Where the vertical distance between the grade plane and the highest roof surface exceeds 30 feet (9144 mm), approved aerial fire apparatus access roads shall be provided. For purposes of this section, the highest roof surface shall be determined by measurement to the eave of a pitched roof, the intersection of the roof to the exterior wall, or the top of parapet walls, whichever is greater.

D105.2 Width. Aerial fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925 mm), exclusive of shoulders, in the immediate vicinity of the building or portion thereof.

D105.3 Proximity to building. At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572 mm) and a maximum of 30 feet (9144 mm) from the building, and shall be positioned parallel to one entire side of the building. The side of the building on which the aerial fire apparatus access road is positioned shall be approved by the *fire code official*.

D105.4 Obstructions. Overhead utility and power lines shall not be located over the aerial fire apparatus access road or between the aerial fire apparatus road and the building. Other obstructions shall be permitted to be placed with the approval of the *fire code official*.

**SECTION D106
MULTIPLE-FAMILY RESIDENTIAL DEVELOPMENTS**

D106.1 Projects having more than 100 dwelling units. Multiple-family residential projects having more than 100 *dwelling units* shall be equipped throughout with two separate and *approved* fire apparatus access roads.

Exception: Projects having up to 200 *dwelling units* may have a single *approved* fire apparatus access road when all buildings, including nonresidential occupancies, are equipped throughout with *approved automatic sprinkler systems* installed in accordance with Section 903.3.1.1 or 903.3.1.2.

D106.2 Projects having more than 200 dwelling units. Multiple-family residential projects having more than 200 *dwelling units* shall be provided with two separate and *approved* fire apparatus access roads regardless of whether they are equipped with an *approved automatic sprinkler system*.

**SECTION D107
ONE- OR TWO-FAMILY RESIDENTIAL
DEVELOPMENTS**

D107.1 One- or two-family dwelling residential developments. Developments of one- or two-family *dwelling units* where the number of *dwelling units* exceeds 30 shall be provided with two separate and *approved* fire apparatus access roads, and shall meet the requirements of Section D104.3.

Exceptions:

1. Where there are more than 30 *dwelling units* on a single public or private fire apparatus access road and all *dwelling units* are equipped throughout with an *approved automatic sprinkler system* in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3 of the *International Fire Code*, access from two directions shall not be required.
2. The number of *dwelling units* on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the *fire code official*.

**D108
REFERENCED STANDARDS**

ASTM	F 2200—05	Standard Specification for Automated Vehicular Gate Construction	D103.5
ICC	IFC—12	International Fire Code	D101.5, D107.1
UL	325—02	Door, Drapery, Gate, Louver, and Window Operators and Systems, with Revisions through February 2006	D103.5

EXHIBIT E
PDD2015-01 STAFF REPORT

**The Lookout Winery District
Public Works comments, November 2015**

Roads

In general, all roadways must be designed to meet Sections 5 and 6 of the current City of Chelan Development Standards.

Bighorn Way – this will be public right-of-way and classified as a minor collector. The 10' wide travel lanes are acceptable, but the parallel parking on both sides needs to be 8' wide (currently shown as 7' wide).

Lanes – we consider these to be “alleys”, since they meet the definition. The plans show a 12' wide driving surface with 4 feet of gravel on each side. The entire width of the alleys needs to be paved since they will be the primary access for the homes. There will be dust in the summer, and the gravel will make a mess during snowplowing in the winter.

Yield streets (Bluebell, Dragonfly, and Street A) – yield streets and/or one-way streets are **not acceptable**. These need to be shown (at a minimum) as local streets in mountainous terrain, with 2 lanes for two-way travel. Minimum standards are 28' pavement width, 38' right of way, and a sidewalk on one side. This will provide 2 lanes of traffic and parking on one side.

Bluebell Lane at Porcupine – Bluebell Lane narrows down to a 30' width at the intersection with Porcupine Lane, and this is inadequate to meet the Development Standards. The applicant can ask for a deviation from the Standards per CMC 25.05.050. There is still enough width for 2 traffic lanes, but no parking will be possible in this area. The applicant must mitigate the lost parking, and the narrowing of Bluebell Lane at the intersection with Porcupine can act as a traffic calming measure.

Connectivity to adjoining properties – the east end of Bighorn Way will provide a future connection to the Lehmecker property, and it appears that Lane M connects to the O'Neal property to the south.

Trails – it will be acceptable to substitute a trail for a sidewalk as long as each dwelling unit has direct access to the trail; i.e., pedestrians don't have to cross a street or private road to get onto the trail. The trail must meet or exceed the functionality that would be provided by a standard sidewalk.

Snow Storage – need to show storage areas for all the snow that will be plowed from the streets and alleys in the winter. The City will plow Bighorn Way, and all the other (private) roads and alleys will be plowed by the homeowner's association.

Storm Drainage

Storm drainage must be designed to meet the City of Chelan Development Standards and Ecology's "Stormwater Management Manual for Eastern Washington". Preliminary drawings and stormwater memoranda show that runoff from each individual lot will be retained on site, probably with rock galleries or drywells. The stormwater from the paved areas will be handled

EXHIBIT E
PDD2015-01 STAFF REPORT

Lookout Winery District comments
Public Works, Nov 2015
Page 2 of 5

with bio-infiltration strips/swales located in the planter strip areas, and by several bio-infiltration ponds built into the landscaped areas. These strips and ponds will be designed to handle the 2 year and 25 year storms. All overflow from larger storms (100 year) will be directed to ponds located off-site, on other property owned by The Lookout. Rainfall data from the Manson area will be used for design in order to make it conservative.

Traffic Impact Analysis (TIA)

A TIA for this project, dated March 5, 2015, was prepared by Transportation Engineering Northwest (TENW).

A secondary access for the purpose of accommodating increased traffic volume is required when the number of dwelling units exceeds 100, or when the Average Daily Trips (ADT) exceeds 1,000. Development in the Winery District will bring the total home count at The Lookout to over 100 and trigger this requirement. WSDOT currently has the funding to build a new roundabout at the NoSeeUm intersection, and construction is planned for the year 2017. The Lookout will be required to extend Bighorn Way through the neighboring Lehmbecker property and connect up to the new roundabout, and this will provide the required secondary access.

The TIA identifies a temporary fire/emergency access onto SR150 (Figure 2 and page 8), which will be utilized until the NoSeeUm intersection improvements are completed and Bighorn Way is extended. Emergency access based on health and safety issues requires a secondary access when the number of homes exceeds 30, unless all homes are sprinklered. This temporary access shall be constructed and put into use until the secondary access at the NoSeeUm roundabout is fully developed. The temporary access needs to meet the requirements of the fire chief, and shall be maintained by the applicant.

Lot frontage on platted public street or private road

Section 5-22 of the Development Standards requires that every newly created lot front upon a public street or private road. This standard is not met in the Winery District where many of the homes front upon a green space and use a rear alley for vehicular access. The green spaces are common areas with underground water and sewer lines, and easements will be granted to the City of Chelan so that City personnel can access these areas for utility maintenance and repair. In essence, these green areas are like a private road in that they contain utilities and can be accessed by the City, except that they are covered with grass instead of asphalt and won't be used for primary vehicular access.

Public Works will use the authority of CMC 25.05.050 to allow the applicant to ask for a deviation from the lot frontage standards and allow the common area green spaces to act as frontage. This section of the code states that the deviation shall result in performance equal to or better than the original standards. However, we do so with the caveat that the alleys must be

Development Agreement, City of Chelan and Chelan Lookout LLLP, dated 2/1/2016
City of Chelan Public Works comments
February 5, 2016

Section 4.2.5

Replace the first sentence with the following: "Pursuant to the Parking Management Plan, the Lookout Owners Association shall limit on-street parking so as to assure a minimum of 20' clear access for emergency services and vehicular access." This reflects the basic reason for restricting on-street parking. Simply limiting it to one side of the road is too vague. Please note that, at this time, there is a trial period for allowing parking on one side of the street on portions of Jackrabbit and Porcupine, which are 24' wide streets. This does not meet the above restriction; however, these streets were built before The Lookout took over the project, when it was still Granite Ridge.

Section 4.2.6

This section does not meet City standards. According to our Development Standards (page 5-19), a secondary access is required when the number of single family dwelling units exceeds 30. The homes now being built at The Lookout are on the old Granite Ridge project, and therefore were not subject to this standard. However, with the addition of the Winery District, this requirement will kick in. There is an exemption: if all homes are protected by residential sprinkler systems, up to 100 single family units are allowed before a secondary access is required. At this time, there are over 30 homes built on the Hilltop District (old Granite Ridge), and only a few of them have sprinklers. Therefore, the addition of the Winery District will trigger the requirement for a secondary access. The new NoSeeUm roundabout is scheduled for construction in 2017, and The Lookout plans to connect up with this intersection in order to provide a permanent secondary access. However, in the meantime, they will be required to construct a temporary secondary access as described in the March 5, 2015 Traffic Impact Analysis by TENW. This access is described on Page 1 and Figure 2 of the TIA. This access can be abandoned after connection to the NoSeeUm roundabout is completed.

Section 4.3.4

The last sentence states that the City will be responsible for portions of the Lookout trail system. Public Works does not want to commit to this at this time. This issue can be worked out at the time an actual trail system is designed and built.

Section 7.1.1

The City has plans to upgrade the water main coming out of the Darnell BPS in conjunction with the NoSeeUm roundabout project. The Lookout has agreed to pay a pro-rata share of the cost to upgrade this line, to the amount of \$66,360. We had understood that this item would be included in the Development Agreement.

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1 yourself, so we can --

2 MS. REYNOLDS: Deanne Reynolds, City of
3 Chelan Public Works, 50 Chelan Falls Highway.

4 The original plat, Granite Ridge, was
5 done, I think, in '05, '06. Secondary access was not
6 required at that time, and so they've continued to
7 build under that old plat.

8 Now, this new winery district triggers
9 that need for the secondary access when you are over
10 30. That's a cumulative amount. So this approval --
11 they're immediately over 30, because they've got 50
12 homes up there. So, yes, it will be required right
13 away as part of the improvements for the winery
14 district to make a temporary secondary access for this
15 project.

16 That access has actually been identified
17 in their traffic impact analysis that was done last
18 March. At that time, we didn't know that the
19 no see-um roundabout was going to get funding, and so
20 they actually did identify a temporary access point
21 that is, it's suitable for -- we like it and it's
22 already an access point for a home. Site distance is
23 good. So we're going to have them do that for a
24 temporary access until the roundabout is complete.

25 THE HEARING EXAMINER: Okay. Thank you

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Page 1

DEVELOPMENT AGREEMENT BETWEEN
the CITY OF CHELAN
and
CHELAN LOOKOUT LLLP
for the development of
the LOOKOUT

Major Revision is required to adjust the Density Distribution of any District by more than 20% or to exceed the Maximum Residential Density.

4.2 Parking and Traffic Management. Parking and traffic management within the Project Area will be subject to the Parking Management Plan, as updated from time to time, attached as *Exhibit D*. The following parking and traffic management standards, rules and regulations shall apply to the Project:

4.2.1. **Maximum Number of Parked Vehicles.** Two vehicles per residence may be parked at or near each residence. Subject to rules adopted by the Lookout Owners Association, both vehicles will be parked either off-street (on the home site) or at a minimum one off-street and one on-street. On-street parking shall be within designated parking areas on certain streets as depicted on *Exhibit D*. No on-street parking shall be permitted within the no-parking areas and fire lanes within the Project depicted on *Exhibit D*.

4.2.2. **Utility Parking/Minimum Amount of Parking.** All vehicles in excess of the maximum provided above, vehicles for patrons using the waterfront improvements in the Lakeside District, and all accessory vehicles/items including, boat trailers, snowmobile/four-wheeler trailers, recreational vehicles, fifth-wheels, etc., shall be parked in the Utility Parking Area depicted on *Exhibit D*. Pursuant to the City's Development Standards, Section Nine, Parking Standards, the Utility Parking area shall include at least 0.25 parking spaces per completed dwelling unit within the Project Area and 0.5 spaces per moorage stall within the Lookout marina.

4.2.3. **Timing of Construction of Utility Parking Area.** Chelan Lookout shall construct the Utility Parking Area as part of developing the Winery District, but may do so initially by providing a gravel surface that may be later improved to chip seal before it is finally improved to asphalt surface as part of completing the Barn District so long as at each stage it is hard-surfaced, graded and drained to dispose of surface water to the satisfaction of the City's Public Works Director and maintained in good condition free of weeds, dust, trash and debris.

4.2.4. **Waterfront Parking and Access.** The Lookout Owners Association in conjunction with Lookout Cottage Rentals shall provide daily access service to the waterfront during the summer season: beginning on the Friday before the Memorial Weekend, through the weekend after the Labor Day Weekend.

4.2.5. **Parking and Traffic Management Enforcement.** Pursuant to the Parking Management Plan, the Lookout Owners Association shall limit on-street parking to ensure a minimum of 20'-clear access for emergency services and vehicular access on all roads within the Project Area except for Porcupine Lane and Jackrabbit Lane where this minimum clearance requirement shall not apply. Parking restrictions shall be by posted signage, striping or other appropriate means. Parking passes may be used to ensure compliance with these parking and traffic management requirements. Pursuant to the Master CC&Rs, the Lookout Owners Association has the authority to issue parking fines to violators and to tow cars violating these parking and traffic management requirements.

4.2.6. **Secondary Access.** Pursuant to the City's Development Standards, Section Five, Street Standard, 5C.090.E and .F and the Traffic Impact Analysis prepared by TENW dated March 5, 2015, Chelan Lookout will construct a secondary access to the Project Area as follows:

4.2.6.1. **Temporary Emergency/Public Services Access.** Prior to approval of any Development Permit within the Winery District, Chelan Lookout shall construct and maintain at its sole cost and expense a 20'-wide temporary secondary access in a location approved by the City's Department of Public Works that shall be accessible at all times for emergency and public services vehicles. The temporary secondary access may be constructed with a gravel surface, without sidewalks or other improvements and shall be maintained until the secondary access in Section 4.2.6.2 is constructed.

4.2.6.2. **Permanent Secondary Access.** Chelan Lookout, at its sole cost and expense, shall construct a permanent secondary access to the Project Area upon the earlier of WSDOT's completion of the No-See-Um Roundabout, construction of 100 ERUs within the Project Area or when the Project generates 1,000 ADTs. The permanent secondary access shall be constructed pursuant to the standards in 5C.030 for a Minor Collector. If WSDOT has completed the No-See-Um Roundabout when the permanent secondary access must be constructed, it will be located through the "Lords Acres" parcel to align with and connect to the No-See-Um Roundabout. If WSDOT has not completed the No-See-Um Roundabout when the permanent secondary access must be

constructed, it may be in an alternative location approved by the City's Department of Public Works.

4.3 Project Open Space/Parks and Trails.

4.3.1. **Required Amount of Project Open Space.** Upon final Project build-out, Chelan Lookout will create a mix of publicly and privately accessible open space within the Project. During the Term of this Agreement, Chelan Lookout shall provide and retain Project Open Space equal to or exceeding 15% of the Project Area, which exceeds the 10% required by CMC 17.52.130. A Minor Revision is required to reduce the Project Open Space as depicted in *Exhibit E* by 10% or more at any one time; provided, however, in no event shall the Project Open Space be reduced to 10%, or less, of the Project Area.

4.3.2. **Location of Project Open Space.** The Project Open Space is intended to be located adjacent to and serve areas of greater density within the Project Area. *Exhibit E* depicts the conceptual size and location of the Project Open Space amenities. The final size and location of the Project Open Space amenities will be determined in each Land Division in the Project.

4.3.3. **Types of Project Open Space.** The Project Open Space will include a mix of publicly- and privately-accessible active and passive parks and open space, recreational/park-type facilities and structures, trails, and bicycle facilities that will be available for use without charge. The Project Open Space is intended to provide enhanced passive and active recreation opportunities ranging from large gathering spaces to intimate greenbelts and will create multi-modal transportation facilities, which will serve people in the Lake Chelan area. The Project Open Space will further create a network of trails and bike riding facilities within the Project to connect to the City's existing and future trail system and, as appropriate, to connect with facilities to be constructed by WSDOT including specifically the No-See-Um roundabout. Instead of providing the standard five-foot wide sidewalk, as part of the Project Open Space, Chelan Lookout will construct a ten-foot wide multi-use trail along the north side of Bighorn Lane and Bluebell Lane as depicted on *Exhibit E*.

4.3.4. **Construction and maintenance of Project Open Space.** Chelan Lookout will develop and construct the Project Open Space as part of a Land Division and it shall be complete on or before final approval of the Land Division regardless of whether the Project Open Space extends beyond the physical boundary of the Land Division. Chelan

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1 management practices and where their site is going, or
2 where any exported soil is going. That needs to be
3 identified as part of that plan.

4 MR. GALBRAITH: And again, that's
5 specifically addressed in the proposed conditions of
6 approval.

7 And -- yes.

8 THE HEARING EXAMINER: All right.

9 MR. GALBRAITH: And I have one more
10 comment.

11 THE HEARING EXAMINER: Yes, yes.

12 MR. GALBRAITH: And this addresses
13 specifically page 2, I think -- yeah, page 2 of the
14 Whiskey Ranch letter, the last full paragraph.

15 I want to make sure that The Hearing
16 Examiner appreciates that the argument that they made
17 about the, the SEPA review, that it was clearly
18 erroneous, they equate that to a planning issue in the
19 site, specifically, CMC section 17.50.080 B1, which is
20 essentially the same thing as RCW 58.17.110, about
21 being in harmony with the surrounding area and
22 addressing the public health safety and general
23 welfare.

24 That addressed the development as a whole,
25 not an underlying process. The underlying process

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1 like this is addressed, as Mr. Ajax stated, is through
2 the permit process that addresses those individual
3 things. So I think that this is a erroneous tie of
4 the issue of fill material with the two sections I
5 stated regarding planned developments and
6 subdivisions.

7 THE HEARING EXAMINER: All right.
8 Anything else from Staff?

9 MR. AJAX: Not at this time.

10 THE HEARING EXAMINER: Is there anything
11 further from the Applicant?

12 MR. BROMILY: Well, briefly, Mr. Hearing
13 Examiner, just a couple of comments, and I'll go back
14 to the podium, I guess.

15 THE HEARING EXAMINER: All right.

16 MR. BROMILY: This is Kirk Bromily again,
17 the counsel for the Applicant.

18 In response to the Whiskey Ranch letter, I
19 want to point out that any challenges to the SEPA
20 determination by the City at this point are tardy.
21 Those challenges had to be in, I believe, it was by
22 January 28th, and were not made, so I think it's too
23 late in that regard.

24 In terms of the access issue, the
25 Applicant and the City will work that out in the

EXHIBIT M

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LAKE CHELAN AIRPORT BOARD
April 26, 2016

1. Call to Order
2. Agenda Changes
3. Minutes
 - A. Approve Minutes of the April 12, 2016 Airport Board Meeting (Gallucci)
4. Consent Agenda
 - A. Approve April 26, 2016 Claim & Payroll Warrants (Reviewed by Steele)
5. Public Hearings
 - A. None
6. Action Items
 - A. None
7. Airport Manager Comments
8. Adjournment

MINUTES OF THE APRIL 12, 2016
AIRPORT BOARD MEETING
Chelan City Hall, 135 East Johnson Avenue, Chelan, Washington

1. **CALL TO ORDER**

The meeting was called to order at 7:24 p.m.

BOARD MEMBERS PRESENT

Airport Board President Cooney, Members Allen, Harper, Dobbs, Isenhart, McCardle, Morehouse, and Steele, Manager Schmidt and Secretary Gallucci.

2. **AGENDA CHANGES**

A. None.

3. **MINUTES:**

Mr. Steele moved to approve the minutes as follows. Second by Mr. Morehouse. Motion passed unanimously.

A. Minutes of the March 24, 2016 Airport Board Meeting

4. **CONSENT AGENDA**

Mr. Steele moved to approve the consent agenda as follows. Second by Mr. Morehouse. Motion passed unanimously.

A. April 12, 2016 Claim Warrants No. 6271 to 6282 totaling \$16,187.75 and Payroll Warrants No. 3168 to 3174 totaling \$1,949.62.

5. **PUBLIC HEARINGS.**

A. None.

6. **ACTION ITEMS**

A. None.

7. **AIRPORT MANAGER COMMENTS**

A. None.

8. **ADJOURNMENT**

There being no further business, the meeting adjourned at 7:25 p.m.

Prepared by:

Attested to:

Date approved by Airport Board:

Peri Gallucci
Airport Board Secretary

Michael Cooney
Airport Board President