

DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

140 19th Street NW
East Wenatchee, WAS 98802-4109

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
P-13-03)	DECISION AND
Vista Del Rio Estates)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on January 17, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. The applicant is Richard Montoya, 100 1st St. NE, East Wenatchee WA.
2. General Description: An application to amend the preliminary plat approval for a 26 lot subdivision. During construction of the subdivision, rock was discovered which prevents stormwater from being infiltrated on site. The amendment proposes the following:
 - 2.1 Route the stormwater to an off-site property where a retention facility will be constructed;
 - 2.2 Eliminate the 4 originally proposed stormwater tracts; and
 - 2.3 Reconfigure the plat from 26 lots to 24 lots plus a open space tract which encompasses a geologic/groundwater seepage area discovered during construction.
3. Location: The subject property is described as being located west of Eastmont Avenue, East of Sunset Highway (SR-28), north of North Breckenridge Drive, East Wenatchee, Section 26, Township 23 N., Range 20 E.W.M., Douglas County Washington. The Douglas County Assessor's Numbers are 23202630004 and 23202620008.
4. Site Information:

Total Project Size:	8.97 acres
No. of lots	24
Domestic Water:	East Wenatchee Water District
Sewage Disposal:	Douglas County Sewer District
Power/Electricity:	Douglas County PUD
Fire Protection:	Douglas County Fire District #2
Telephone Service:	Frontier

5. Site Characteristics: The existing site is currently a large open area covered with thin grass and scattered sage brush. The project site is currently vacant, however noticeable earthwork has been done on portions of the site. Within the south portion of the site, a drainage swale traverses the site from east to west in a markedly incised channel, with very steep slopes. To the east there is a fairly steep hillside. Within the northwest portion of the site, we noted a significant amount of grading and filling has occurred. From the west of the site to the adjacent property a very steep slope was encountered.
6. Surrounding Property: To the north, single family homes; to the south, a residential subdivision; to the east, Eastmont Ave, and vacant property; to the west single family homes, and a church.
7. The subject property is located within the Greater East Wenatchee Planning Area.
8. The subject property is located within the East Wenatchee Urban Growth Area.
9. The Comprehensive Plan Designation is Low Residential.
10. The subject property is located in the R-L zoning district which allows for subdivisions as permitted uses.
11. Preliminary approval was granted for a 26 lot major subdivision by the Douglas County Hearing Examiner on October 21, 2015.
12. On March 28, 2007, Douglas County adopted sections of Title 17 'Zoning' of the East Wenatchee Municipal Code within the unincorporated portions of the East Wenatchee Urban Growth Boundary. This application is vested under the version adopted by Ordinance TLS 08-03-05 on January 8, 2008.
13. One public comment was received during the comment period. Mr. Shawn Rush submitted comment regarding the proposal to transport stormwater down McElmurry to the offsite detention pond. He provides comments on the seepage that is occurring, the proposed path for the stormwater piping and asks a question about a potential gate for access to the stormwater facility.
14. The following reports have been submitted with the application materials.
 - 14.1 December 11, 2013, Nelson Geotechnical Associates (NGA), Engineering Geologic Hazard Assessment.
 - 14.2 April 15, 2014 (received April 18, 2014), NGA Amended Engineering Geological Assessment.
 - 14.3 February 2015 (received March 13, 2015) Western Pacific Engineering (WPE) Geotechnical Investigation.
 - 14.4 January 15, 2014, Transportation Engineering Northwest Traffic Impact Analysis of the Bella Vista Estates.
 - 14.5 Preliminary Stormwater Evaluation, Torrence Engineering (revised April 21, 2015) received May 5, 2015.
 - 14.6 Preliminary Stormwater Evaluation, Torrence Engineering, August 2015, received August 31, 2015.

- 14.7 Preliminary Engineering Plans, Torrence Engineering, August 25, 2015 (received August 31, 2015).
 - 14.8 Letter, dated August 28, 2015, Western Pacific Engineering & Survey, regarding concurrence with Preliminary Engineering Drawings.
 - 14.9 August 28, 2015 Western Pacific Engineering & Survey review of preliminary engineering.
 - 14.10 August 31 2015 revised Preliminary Engineering, Torrence Engineering.
 - 14.11 August 31, 2015 revised Preliminary Drainage Report, Torrence Engineering.
 - 14.12 Geotechnical Investigation from Western Pacific Engineering dated August 2018.
 - 14.13 Preliminary Stormwater Evaluation from Torrence Engineering dated November 28, 2018.
 - 14.14 Preliminary Civil Design Plans from Torrence Engineering Dated November 28, 2018.
15. The April 15, 2014 Amended Engineering Geologic Hazard Assessment does not provide information with regard to design and construction of public roads (structural design) with respect to native ground and to areas of undocumented fill. Page 8 of the Amended report continues to note “that a geotechnical engineering investigation and report be performed for this project, due to the presence of undocumented fill, graded areas and moderate to steep slopes.
16. The WPE Geotechnical Investigation identified the following:
- 16.1 The WPE report acknowledges that “noticeable earthwork has been done on portions of the site.”
 - 16.2 The WPE report acknowledges that a drainage swale traverses the site in a markedly incised channel with very steep slopes.
 - 16.3 The WPE report acknowledges “a significant amount of grading and filling has occurred.”
 - 16.4 The WPE report indicates that “very steep slopes” were encountered from the west of the site to the adjacent property.
 - 16.5 The WPE report notes that some soils found on site were silty material, which “could become expansive in freezing conditions due to their small particle size and slow draining ability.
 - 16.6 WPE recommended mitigation measures includes: The following shall be noted graphically on the face of the plat. 2:1 slopes shall be outlined as native reserve areas. A plat note shall indicate the native reserve areas are exempt for further development.
 - 16.7 WPE recommended mitigation measures includes: The site designer shall make recommendations on how the water channel discussed within the Hydro Geology section of the report, page 7 will be addressed. These recommendations will become conditions of approval for the subdivision, and must be satisfied during site design (road & stormwater) prior to final plat approval.

17. The June 10, 2015 letter from WPE includes the following recommendations:
 - 17.1 Stormwater runoff be dispersed over as large of an area as possible.
 - 17.2 A native planting strip be planted on the lower section of the lots. Lots 22-26 shall include a 50 foot native planting easement and Lot 21 shall be a native planting easement 40 feet at the north end and 50 feet on the south end. These areas shall be clearly identified on the construction plans, including specifications for establishment of the required native vegetation. The native vegetation areas shall be clearly identified within a native vegetation and slope easement. A maintenance plan shall be prepared and recorded for the native vegetation area. The applicability of the maintenance plan shall be clearly identified on the face of the plat and the Auditors File Number of the recorded maintenance plan provided.

18. The August 2018 WPE Geotechnical Investigation has identified/stated the following:
 - 18.1 Based on our exploration and research into the site, it is our belief that the bedrock below the proposed pond is approximately sixteen to seventeen feet below the surface and sloping down gradient to the west.
 - 18.2 Soil infiltration rates for the proposed pond are estimated to be six to eight inches per hour (6-8 in/hr).
 - 18.3 The seepage mentioned in the April 6, 2018 comment letter is a low flow of approximately one or less gallons per minute. The seepage collects in a small pool on the adjacent property and then overflows onto the driveway and then across the county road.... The cause of the seepage is likely stormwater infiltration into the soils surrounding and up gradient of the fold in the bedrock.... To mitigate the seepage overflow from the small pool or to eliminate the small pool it is recommended to install a catch basin or French drain and pipe the seepage to the stormwater pond that is being designed for the project.
 - 18.4 Testing has shown that the sandstone bedrock, and likely water table is approximately seven feet below existing grade.... The pipeline can be safely installed using conventional shallow techniques in conformance within Washington State Department of Labor and Industries requirements.
 - 18.5 To cut the roadway into the existing bank would likely increase instability and therefore it is recommended that the access road not be installed and that the stormwater pipeline be installed perpendicular to Breckenridge Drive and parallel to McElmurry Lane.
 - 18.6 The subsurface conditions are geotechnically suitable for construction as long as the previously listed and explained design recommendations and considerations are taken into account.

19. The November 28, 2018 Preliminary Stormwater Evaluation has identified/stated the following:

- 19.1 Rock was encountered during construction of the project which has led to the necessity to move the retention pond..... The new pond will be located offsite, westerly of the property boundary.
- 19.2 Two additional test pits were dug in the area of the new infiltration pong:
One by our office was dug in mid-October to a depth of 18' from existing ground. Other than the top few inches of topsoil, then entire pit consisted of fine sand. There was no indication of an impermeable layer or other restrictive layers.
20. RCW 58.17.110(2) requires that appropriate and adequate provisions be made for streets or roads, alleys or other public ways.
21. The subdivision will access N. Breckenridge Dr. The proposal includes a new public local access street through the property.
22. Section 17.04.040(A), D.C.C., authorizes dedications of right-of-way and improvements to the area directly affected by the development.
23. In order to meet the state requirements for Enhanced 911 service, all lots within this plat will be addressed prior to final plat approval.
24. Comments from reviewing agencies have been considered and addressed where appropriate.
25. Douglas County issued a Determination of Nonsignificance on January 3, 2019 pursuant to WAC 197-11-355 (Optional DNS).
26. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
27. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
28. Purveyors who responded to the project have indicated that adequate utilities/services are or can serve this project.
29. Section 17.24.150 of the Douglas County Code requires that every subdivision shall be served by a water supply system approved and installed to meet the requirements and standards of the Chelan Douglas Health District.
30. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
31. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
32. The Douglas County Department of Land Services recommended approval of this preliminary plat, subject to the recommended conditions of approval.
33. An open record public hearing after due legal notice was held on January 17, 2019.
34. The entire Planning Staff file was admitted into the record at the public hearing.
35. Appearing and testifying on behalf of the applicant was Jon Torrence. Mr. Torrence testified that testified that he was the agent of the property owner and was authorized to appear and speak on their behalf. Mr. Torrence testified that the applicant concurred with the all of the

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

36. No member of the public testified at the hearing.
37. 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.
38. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
39. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
40. Any conclusion of law that is more correctly a finding of fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Greater East Wenatchee Area Comprehensive Plan.
3. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
4. Public use and interests will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Title 17 Zoning of the East Wenatchee Municipal Code as adopted by Ordinance # 01-01H and last amended by TLS 08-03-05.
6. As conditioned, the proposal is consistent with Title 17 "Subdivision", Title 19 "Environment", and Title 20 "Development Standards", of the Douglas County Code.
7. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
8. As conditioned, the proposal does conform to the standards specified in Douglas County Code.
9. As conditioned, the use will comply with all required performance standards as specified in Douglas County Code.
10. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Douglas County Code or the Comprehensive Plan.
11. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
12. 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, Application P-13-03 is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

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

1. The project shall proceed in substantial conformance with the plans and application materials of file dated December 30, 2013, April 28, 2014, March 13, 2015, June 11, 2015, August 31, 2015, September 1, 2015, February 16, 2018, October 3, 2018 and November 28, 2018 except as amended by the conditions herein.
2. Conditions 3 – 24, 26-36, 39, 40, and 48-51 from the Notice of Action dated October 21, 2015 are still timely and shall remain in effect.

The following conditions are revised. The numbering below is kept for reference back to the original notice of action.

25. The extension of N. Breckenridge Drive shall be designed and constructed from the end of the existing transportation improvements (road/sidewalk) to the end of the cul-de-sac. Construction shall include connection and extension of curb, gutter and sidewalks and a paved cul-de-sac turnaround and snow storage easement (20ft x 30ft). The extension of the transportation improvements shall tie into the existing improvements and shall satisfy Figure 3-7b of the Road Standards, with parking on both sides. Signage restricting parking in order to accommodate emergency vehicles and the snow storage area shall be installed in the cul-de-sac.
37. A letter of concurrence from the geotechnical engineer shall be provided prior to acceptance of the final plans and design report confirming stormwater design conforms to the submitted Geotechnical Analysis (August 2018 and February 2015 prepared by Western Pacific Engineering – April 2014 and December 2013 prepared by Nelson Geotechnical Associates.
38. As specified in the Geotechnical Investigation (August 2018), a catch basin or French drain shall be installed to correct the seepage issue on McElmurry Lane; this shall be shown on the construction plans.
41. Stormwater facilities shall be located on separate tract(s) and a offsite parcel, under the functional control of the homeowners association with each lot having an undivided ownership, interest and responsibility for the tract(s) and parcel. The offsite parcel shall be deeded to the homeowner's association for the purpose of access and maintenance of the stormwater facilities. A note shall be included on the face of the plat which states:
Offsite stormwater management facilities have been deeded to the homeowners' association per AFN _____ for the purpose of access and maintenance of the stormwater facilities.
42. The design of proposed stormwater facilities shall comply with the guidance contained within the Stormwater Management Manual for Eastern Washington. Provisions physical in nature, including but not limited to fencing and signage to provide for the long term protection of the

stormwater facilities shall be included within the final design plans/report. Physical barriers and stabilization of the tract(s) and offsite parcel shall be in place prior to final plat approval.

43. In accordance with the Stormwater Management Manual for Eastern Washington, design and maintenance criteria for infiltration ponds and stormwater facilities shall be designed to overflow to the public right-of-way or oversized by 25% (plus 1' of freeboard). A downstream analysis of potential overflow impacts shall be included within the design report.
45. Prior to final plat approval, a private stormwater operation and maintenance agreement must be executed, recorded and the Auditor's File Number referenced on the face of the final plat for the private stormwater facilities. Said agreement shall be executed on standard forms approved by Douglas County. It shall be clearly noted on the face of the plat that Douglas County will not maintain the private stormwater facilities (tracts and offsite parcel). The agreement shall specify the homeowners of the subdivision as having responsibility for the long-term maintenance of the private stormwater drainage system within the development and the offsite parcel.
46. As recommended within the Nelson Geotechnical Associates Engineering Geologic Hazard Assessment and the Torrence Engineering Preliminary Stormwater Evaluation: residential construction shall include utilization of roof drains to convey runoff to the approved stormwater facility. As such the following notes (or similar) shall be included on the face of the plat to identify site specific requirements associated with lot development.
 - 46.1 Each lot is provided with an individual stormwater stub. Home construction shall include roof drains and gutters. Concurrent with building permit submittal a stormwater site plan prepared by a licensed engineer routing roof drains/gutters to the stub provided shall be submitted. Lots 15-24 shall connect the entire roof surface to the stub. Lots 1-14 shall at a minimum connect the eastern half of the roof to the stub.
 - 46.2 Concurrent with building permit submittal a erosion control plan shall be submitted. Prior to on-site grading construction stormwater best management practices shall be implemented.
 - 46.3 The engineer of record shall provide certification that the private stormwater collection and conveyance and connection to the stormwater stub is completed in accordance with the plan submitted.
 - 46.4 A private stormwater operation and maintenance agreement shall be prepared and executed on approved Douglas County forms and recorded with the county auditor.
47. As specified within the Geotechnical Analysis (WPR – February 2015), temporary and permanent site stabilization shall be addressed as noted below:
 - 47.1 A native planting strip shall be planted on the lower section of the lots. Lots 23-24 & Tract A shall include a 50-foot native planting easement and Lot 22 shall have a native planting easement 40 feet in width at the north end and 50 feet in width at the south end. These areas shall be clearly identified on the construction plans, including specifications for establishment of the required native vegetation. The native vegetation areas shall be clearly identified within a native vegetation and slope easement. Planting shall be as recommended by a native plant horticulturist.

- 47.2 A maintenance plan shall be prepared and recorded for the native vegetation areas required for Lots 22-24 & Tract A. Applicability of the maintenance plan shall be clearly identified on the face of the plat and the Auditors File Number of the recorded maintenance plan provided on the plat map. The operation and maintenance plans for the native vegetation area shall be prepared by a native plant horticulturist.
- 47.3 As specified by the Geotechnical Engineer; 2:1 slopes shall be sprayed with a mechanical bonded fibre mulch. This mulch shall be interlaced with equal portions of the following native grasses: Indian Rice Grass, Needle Thread Grass, Blue Bunch Wheat Grass and Thick Spike Wheat Grass. After covering the hillside, the following shrubs should be planted to allow for deep root stabilization: Snow Buckwheat, Rabbit Brush, Yarrow, and Chelan Penstemon. All plantings shall be as recommended by a native plant horticulturist.
- 47.4 As specified by the Geotechnical Engineer, slopes less than 4:1 need not be heavily planted, but shall be stabilized to prevent erosion. Stabilization shall be specified in accordance with the SWMMEW.

The following are new conditions based on review of the proposed amendment

52. Execution of a Franchise Agreement for private utilities located within Douglas County right-of-way, including but not limited to the private storm drain pipe located on McElmurry Lane is required prior to final plat approval. The process takes a minimum of 6 weeks and the applicant is responsible for initiation and coordination of the Franchise application and is required to coordinate directly with Douglas County staff for assistance in this process.
53. Tract A shall be clearly labeled as an Open Space Tract on the final plat.

Dated this 23rd day of January, 2019.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas 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.