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DOUGLAS COUNTY

DEPARTMENT OF HEARING EXAMINER

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

DOUGLAS COUNTY TLS

BEFORE THE DOUGLAS COUNTY HEARING EXAMINER

<p>IN THE MATTER OF</p> <p>P-2019-02</p> <p>Chadwick Place</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>FINDINGS OF FACT,</p> <p>CONCLUSIONS OF LAW,</p> <p>DECISION AND</p> <p>CONDITIONS OF APPROVAL</p>
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THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on September 11, 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 and owner is PNW Property Ventures LLC - Keath Bennett, 325 W Warren St, Boise, ID 83706.
2. General Description: An application for a 39 (formerly 42) Lot subdivision (“Chadwick Place”) submitted by PNW Property Ventures LLC. The subject property is approximately 8.26 acres in size. The lots are proposed to range in size from approximately 5,730 square feet to 8,251 square feet. The property is located in the Residential Low Density (R-L) zoning district under East Wenatchee Municipal Code.
3. Location: The subject property is located at 3227 NW Cascade Ave- East Wenatchee; and is further described as being located within Section 26, Township 23N, Range 20E, W.M. The Assessor’s Parcel Number is 40600002401.
4. Site Information:

Total Project Size:	8.26 acres
No. of lots	39 (formerly 42)
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:	Varied
5. Site Characteristics: The topography is relatively flat; and the property includes a single family residence.

6. Surrounding Property:
 - North: Single family homes.
 - South: Single family homes
 - East: Single family homes and agriculture
 - West: Single family homes
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 Low Density Residential (R-L) zoning district which allows for subdivisions as permitted uses.
11. On March 28, 2007, Douglas County adopted Ordinance No. 07-01H which adopted portions of Title 17 of the East Wenatchee Municipal Code within the unincorporated portions of the East Wenatchee Urban Growth Area.
12. EWMC 17.72.210 requires residential lots to have not less than 40 feet of frontage on a public or private roadway, except when located within a cul-de-sac, or when the lot is accessed from a joint-use driveway or access easement meeting the requirements of Chapters 12.50 through 12.60 EWMC. A minimum of 20 feet of contiguous frontage is required for lots located on a cul-de-sac (road right-of-way) and lots located on the outside of a road curve with a radius between 50 and 75 feet.
13. The Douglas County Fire Marshal responded that the preliminary plat was “approved with conditions.” Final coordination with the Douglas County Fire Marshal and final acceptance will be necessary prior to final plat approval.
14. The application triggers the requirement to provide parks/open space. Based on project size, the minimum required open space is 0.4139 acre. The application proposes a combination of open space and payment in lieu of providing such space. AFN 3062395 establishes an easement being used as the on-site parks, open space and recreational areas. This easement states “the grantor shall make no use of the land occupied by said easement except for ingress and egress to orchard.” At this time, the applicant shall make payment in lieu of providing such space for the entire required open space of 0.4139 acre or obtain agreement to revise the easement. Final agreements and/or cost estimates have not been reached and/or finalized.
15. The East Wenatchee Water District provided comment that public water is available per this request upon completion of necessary conditions.
16. The Douglas County Sewer District provided comment that public sewer is available per this request upon completion of necessary conditions.
17. Initial application materials reviewed by Douglas County Transportation and Stormwater include:
 - a. Alternate to Code prepared by Pacific Engineering, accepted August 13, 2019.
 - b. Preliminary Engineering prepared by Pacific Engineering, received July 29, 2019.
 - c. Preliminary Storm Drainage Report prepared by Pacific Engineering, received April 15, 2019.

- d. Traffic Impact Analysis prepared by Gibson Traffic Consultants, received April 15, 2019.
 - e. SEPA Checklist prepared by Pacific Engineering, received April 15, 2019.
18. A request for an alternate to the East Wenatchee Municipal Code (EWMC) was reviewed and accepted on August 13, 2019. The alternate to code allows the applicant to:
- a. Utilize a design speed of 20 MPH for the radius directly adjacent to Lots 24-26 & 34.
 - b. Install a joint use driveway connection to Cascade Avenue Northwest to Lots 29 & 30.
19. Preliminary Engineering: The plans depict an internal road configuration that provides for connectivity to 33rd Street Northwest and the vacant property to the west. The plans also depict the installation of pedestrian trail within a 15-foot drainage easement granted to Douglas County located along the southern property line. This easement is recorded under AFN #306239.
20. Stormwater: The storm report proposes to maintain existing drainage patterns by allowing runoff from events larger than the 100-yr/24-hr SCS Type II event and those generated outside of the project boundary to bypass through an existing 36" culvert under Cascade Avenue Northwest located in the southwestern portion of the property.
21. Traffic Impact Analysis. The following intersections were analyzed for level of service impacts: Northwest Cascade Avenue / 33rd Street Northwest; Northwest Cascade Avenue / 35th Street Northwest; SR-28 / 33rd Street Northwest; and SR-28 / 35th Street Northwest. All of the study intersections will operate at LOS C or better with the proposed development
22. In order to meet the state requirements for Enhanced 911 service, all lots within this plat shall be addressed and internal roads shall be named prior to final plat approval.
23. Comments from reviewing agencies have been considered and addressed where appropriate.
24. According to the Washington State Department of Ecology, due to the dry conditions of this region, the Dept. of Ecology reminded staff that extra efforts are needed to control blowing dust and dirt. The proponent should create a site-specific Fugitive Dust Control Plan (FDCP) before starting this project, and then follow the plan for construction of the project and duration of activity on property. The FDCP should include, but is not limited to, the following components:
- a. Identify all potential fugitive dust emission points.
 - b. Assign dust control methods.
 - c. Determine the frequency of application
 - d. Record all dust control activities.
 - e. Train personnel in the FDCP.
 - f. Shut down during windy conditions.
 - g. Follow the FDCP and monitor dust control efforts.
- Washington Administrative Code (WAC) 173-400-040 requires that reasonable precautions be taken to prevent dust from leaving the site. Also, dust is prohibited from interfering unreasonably with the use and enjoyment of property, causing health impacts, or damaging property or business.
25. Douglas County issued a Determination of Non-Significance on September 3, 2019 pursuant to WAC 197-11-355 (Optional DNS).

26. On April 15, 2019, the applicant provided a Geologic Hazard Assessment prepared by Nelson Geotechnical Associates Inc.
27. 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.
28. The applicant conducted a "Neighborhood Meeting" on July 1, 2019 (pursuant to DCC 14.08.012). Over 12 parties attended the meeting.
29. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
30. Purveyors who responded to the project have indicated that adequate utilities/services are or can serve this project.
31. 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.
32. According to the Chelan Douglas Health District, 4 acres of the site was previously an orchard. This orchard may contain area wide or localized contaminated soils from lead arsenate and other pesticides and/or petroleum. The presence of these contaminants may affect the health of on-site construction workers and neighbors when the soil is disturbed by either equipment or weather.
33. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.
34. The Douglas County Department of Land Services recommended approval of this preliminary plat, subject to the recommended conditions of approval.
35. An open record public hearing after due legal notice was held on September 19th, 2018.
36. The entire Planning Staff file was admitted into the record at the public hearing.
37. Appearing and testifying on behalf of the applicant were Keath Bennett and Martin Davy. Mr. Bennett testified that he was an agent of the property owner and the applicant and was authorized to appear and speak on their behalf. Mr. Bennett testified that the applicant agreed with all of the proposed conditions of approval. He testified that the stormwater easement area may be revised to make open space. The property will sold for single family residences.
Mr. Davy testified that curb gutter and sidewalks will be on 33rd and that the property does have irrigation rights.
38. Testifying from the public was Marsha Keifenheim. Ms. Keifenheim testified that they live adjacent to the subject property. Their concern was health risks related to the prior use of the property as an orchard. She requested that environmental studies and test be performed before any ground disturbing activities. She also questioned whether or not the density of this project was compatible with the neighborhood.
39. 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.

41. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
42. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
43. 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.
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. 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-2019-02 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 04/15/2019 and 07/31/2019 except as amended by the conditions herein.
2. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
3. A plat certificate showing parties of interest from a title company must be submitted with the blueline drawings.
4. The final plat shall be submitted by a land surveyor licensed in the State of Washington, and shall comply with the standards set forth in Title 17 of the Douglas County Code.
5. All parties having an ownership interest in the subject property shall acknowledge the plat.

6. It is the responsibility of the applicant to contact the Douglas County Assessor's and Treasurer's offices to confirm all taxes are current prior to final plat approval.
7. During construction, all work associated with the proposed project shall occur between the hours of 6:00 a.m. to 7:00 p.m., Monday through Friday and 7:00 a.m. to 7:00 p.m., Saturday. Construction activities on Sunday shall not commence before 8:00 a.m. and shall conclude by 7:00 p.m.
8. The final plat shall show the location of all easements serving or encumbering the subject property.
9. Prior to final plat approval, the applicant shall resolve the easement restriction, provide final on-site open space/recreation facility design and/or enter into an agreement with Douglas County for voluntary payment in lieu of dedication of open space/parks. Installation of any on-site open space/recreation facilities will be completed concurrent with construction of the necessary infrastructure or bonded for prior to final plat approval.
10. An adequate building envelope for each lot must be established outside of all applicable setbacks and shown on the blueline drawing.
11. The location of existing utilities (i.e. power, sewer, water and irrigation lines, etc.) and utility easements shall be depicted on the face of the final plat.
12. The developer shall install all utilities in accordance with the standards and specifications of the Chelan-Douglas Health District, Douglas County PUD, East Wenatchee Water District, Douglas County Sewer District, and Douglas County Fire District #2.
13. The developer shall prepare final plans for the development and installation of utilities for the approval of the respective purveyors prior to site development. Final "as-built" drawings shall be delivered to purveyors upon completion.
14. Written verification of the availability of public water and sanitary sewer to each lot must be submitted to the Chelan Douglas Health District prior to final plat approval.
15. Prior to final plat approval, written verification shall be provided from the Douglas County Sewer District that all District requirements have been satisfied and that adequate sewer is provided to all lots within the project.
 - 15.1. Prior to approval of any building permit or development application, the applicant will be required to sign a form waiving the right to protest future annexation into the Sewer District. The no-protest waiver for the development will then become appurtenant to each lot of the subdivision. Authority for this requirement is found in the EWMC Section 17.72.260.
 - 15.2. The applicant/developer shall extend public sewer.
16. The following language must appear with the Health District signature line:

"The Health District has not reviewed the legal availability of water to this development."
17. According to the Chelan Douglas Health District, control, including mulching, hydro-seeding, gravel, sod and/or other ground cover for any bare earth left after construction including landscaped areas, paths, unpaved parking areas and roads. Any and all monitoring and compliance complaints shall be with the Chelan Douglas Health District.

18. Prior to final plat approval, Douglas County PUD shall provide written verification that all District requirements have been satisfied.
 - 18.1 Developer must complete a Customer Service Request and provide site and proposed utility drawings. The District will coordinate the electrical and fiber design with the Developer's engineer and provide a cost estimate based on the final design. The cost estimate must be paid prior to final approval. Any costs associated with relocating existing District facilities that may be necessary due to roadway improvements will be the responsibility of the Developer. Utility easements required adjacent to all roads (width to be determined by District Engineer); and shall be shown on the final plat.
19. Prior to final plat approval, written verification shall be provided from the Douglas County Fire Marshal that all requirements have been satisfied.
20. Prior to final plat approval, written verification shall be provided from the East Wenatchee Water District that all District requirements have been satisfied and that adequate water is provided to all lots within the project.
 - 18.1. A DEA (developer line extension agreement) will be required prior to plan submittals to the District. Requirements for fire flow will meet the standards of the Douglas County Fire Marshall and all required improvements will be per current District Design Standards and Specifications.
 - 18.2 The developer will assume all the District's costs for this proposal including inspections, testing and permits. After construction is completed and accepted by the District, a 2-year Maintenance/Warranty Bond will be required.
21. Final construction plans designed by a Professional Engineer licensed in the State of Washington shall be submitted to and accepted by Douglas County prior to construction. Construction plans shall be prepared in accordance with the requirements of the East Wenatchee Municipal Code and Douglas County Code.
22. Frontage improvements are required along Northwest Cascade Avenue in accordance with Figure 3-8 (Urban Collector) from the Douglas County Road Standards.
 - 22.1 The applicant may apply for an alternate to code to potentially eliminate the two-way left turn lane on Northwest Cascade Avenue.
 - 22.2 A 6" thick sidewalk shall be installed adjacent to Douglas County's stormwater easement along the southerly property line.
23. Frontage improvements are required along 33rd Street Northwest in accordance with Figure 3-7b (Urban Local Access) from the Douglas County Road Standards.
24. Coordinate directly with Link Transit to determine if additional transit stops or any other form of mitigation is required as a result of this project. Provide written verification from Link Transit confirming that the existing facilities or proposed mitigation is adequate. Include a signature block for Link Transit on the cover sheet of the construction plans. 5.
25. As described in the accepted alternate to code, the radius directly adjacent to Lots 24-26 and Lot 34 may be designed utilizing a minimum design speed of 20 MPH. All other radii shall be designed utilizing a minimum design speed of 25 MPH unless proposed and accepted through a separate alternate to code process during construction plan review.

26. As described in the accepted alternate to code, a joint use driveway may be installed to Northwest Cascade Avenue which serves Lots 29-30.
27. A 1' non-vehicular easement shall be included along the Cascade Avenue Northwest frontage excluding the access point for the internal road system and the access easement for the joint use driveway serving Lots 29-30.
28. Illumination shall be designed and installed consistent with East Wenatchee Municipal Code, Douglas County Code Section 12.57.100 Roadway Illumination, and meet Douglas County PUD Standards. The applicant shall be responsible for PUD charges for the connection of street lights to the transformer or hand hole. The type of light fixture to be installed shall be coordinated with Douglas County during construction plan review.
29. The location of cluster mailbox units for the subdivision shall be shown on the construction plans. A pullout / turnout shall be provided if the mailbox cluster is located Northwest Cascade Avenue. Location to be accepted by the County Engineer and USPS Postmaster prior to plan acceptance. Additional Right of Way may be required.
30. Minimum five-foot wide utility easements are required along all lots or tracts with County road frontage in accordance with applicable road standards.
31. All existing and proposed easements shall be clearly delineated with the Auditor's File Number(s) noted as necessary on the final plat.
32. As applicable, a Private Access Operation and Maintenance Agreement shall be prepared, executed, and recorded by the applicant; the Auditor's File Number(s) shall be noted on the final plat.
33. Prior to final plat acceptance and/or release of financial security, the Engineer of Record shall provide written certification that the frontage improvements, internal roads, utility plans, stormwater systems, and site grading have been constructed/completed in accordance with the Conditions of Approval, applicable codes, and the accepted construction plans. Monitoring shall be required as determined appropriate by the Engineer of Record and in accordance with the Road Standards, with final reports submitted to Douglas County along with the certification.
34. Final acceptance shall be processed in accordance with East Wenatchee Municipal Code (EWMC) Section 12.56.110 Performance Assurance Agreement and a warranty assurance agreement shall be completed per EWMC 12.50.110 prior to final plat acceptance.
35. All new or revised accesses onto a County road (including temporary) require an approved access permit. An access permit for the applicant's construction entrance(s) shall be obtained prior to any on-site grading or prior to construction plan acceptance (whichever comes first).
36. Utility installation/replacement/upgrade within the Douglas County right-of-way shall be approved by Douglas County. A permit to perform work in the right-of-way shall be obtained prior to construction. Damage to existing roads resulting from construction activities (including utility extensions required to provide necessary services to the proposed development) shall be repaired to the satisfaction of Douglas County, by the applicant. The extent of repair and/or replacement will be determined during construction plan review and during field inspection of the proposed work within the right-of-way.

37. A final site-specific stormwater plan and report prepared by a Professional Engineer (PE) licensed in the State of Washington that conforms to Douglas County Code, and the Stormwater Management Manual for Eastern Washington (SWMMEW) shall be submitted to and accepted by Douglas County prior to construction.
38. Field infiltration tests shall be performed in the location of the infiltration facilities in accordance with the guidance presented in the SWMMEW. The infiltration rate derived in this manner shall be utilized in the design process with an appropriate factor of safety/correction factor applied. The test report shall be included as an appendix to the stormwater report.
39. The drainage report and construction plans shall explain/depict how runoff is being retained on each lot or conveyed to a community storm system. This includes grading and/or storm drainage stubs as necessary. If storm stubs are utilized, a note will be required on the face of the final plat which states:

“At the time of building permit submittal, an engineered site specific stormwater plan shall be submitted that conforms to Douglas County Code and the Stormwater Management Manual for Eastern Washington. The Engineer of Record shall provide certification that the private on-site stormwater system has been completed in accordance with the accepted plans. A Private Stormwater Operation and Maintenance Agreement, prepared with standard Douglas County forms, shall be executed and recorded with the Douglas County Auditor.”
40. Stormwater facilities shall be designed to overflow to the public Right of Way or oversized by 125% of design capacity plus one-foot of freeboard. The volume used to determine that the system meets 125% of design capacity cannot include volume provided by the one-foot of freeboard. A downstream analysis of potential overflow impacts shall be included within the design report.
41. Provisions to provide access for inspection and maintenance to the stormwater tract(s) shall be addressed within the design plans, report, and on the face of the final plat. Pond access shall come the internal road system.
42. The existing Douglas County storm facilities located within the 15-foot easement along the southerly property line shall be preserved and protected. Direct access for inspection and maintenance shall be maintained.
43. Prior to any on-site grading occurring or construction plan acceptance (whichever comes first), a Stormwater Pollution Prevention Plan (SWPPP) and a Temporary Erosion and Sediment Control Plan (TESC Plan) shall be submitted to and accepted by Douglas County. The SWPPP and TESC Plan shall be kept on-site at all times and updated as necessary to address and prevent sediment and sediment laden water from leaving the project site.
44. The applicant is responsible for preventing mud, dirt, debris, and stormwater runoff from being tracked or otherwise discharging onto the public right of way or adjacent properties.
45. Registration of facilities that are regulated under the Washington State Department of Ecology’s Underground Injection Control Program shall be completed prior to construction of the UIC.
46. Stormwater facilities shall be located on a separate tract/tracts under the functional control of the Homeowners’ Association (HOA) with each lot having an undivided ownership, interest, and responsibility for the tract(s).

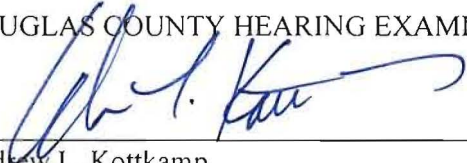
47. The Engineer of Record shall monitor construction and shall provide as-built drawings and report as necessary along with certification that the improvements have been completed in accordance with the applicable codes, regulations, and accepted plans.
48. Prior to final plat acceptance, a Private Stormwater Operation and Maintenance Agreement shall be executed on standard Douglas County forms and recorded. The site plan, details, certification, and operation and maintenance recommendations are provided to the County. County staff then prepares the agreement for signature and recording by the applicant.
49. Individual lots created within this development are subject to the Greater East Wenatchee Stormwater Utility annual service charge. This charge is per parcel and is triggered at the time of building permit issuance.
50. Individual/common plan development for this proposal exceeds 1-acre of disturbed ground. This would meet the threshold by the Washington State Department of Ecology (WSDOE) in administering their general permit to discharge stormwater associated with construction activity.
51. The applicant is responsible for acquisition of all applicable permits prior to beginning ground breaking activities, including but not limited to: Construction Stormwater General Permit, Sand & Gravel Stormwater General Permit, and/or Industrial Stormwater General Permit. Compliance with the Washington State Department of Ecology's regulations is the responsibility of the applicant.
52. In order to meet the state requirements for Enhanced 911 service, all lots within this plat shall be addressed and internal roads shall be named prior to final plat approval.
 - 52.1 The applicant shall follow the guidelines in DCC 12.04 (road naming) for naming A and Road B. Approval of final road naming is required.
 - 52.2 Addresses will be assigned during the blue line review.
53. The recommendations within the received April 15, 2019 Geologic Hazard Assessment prepared by Nelson Geotechnical Associates Inc shall be conditions.
54. According to the Washington State Department of Ecology, the proponent shall create a site-specific Fugitive Dust Control Plan (FDCP) before starting this project, and then follow the plan for construction of the project and duration of activity on property.
55. Control and monitoring complaints shall be reported to the Washington State Department of Ecology. The following note shall appear on the face of the final plat:

“Based upon the historical agricultural use of this land, there is a possibility the soil contains residual concentrations of pesticides. Ecology recommends that the soils be sampled and analyzed for lead and arsenic, and for organochlorine pesticides. If these contaminants are found at concentrations above the Model Toxics Control Act cleanup levels, Ecology recommends that potential buyers be notified of their occurrence.”

This note shall not be required to be placed on the final plat if a professional with adequate credentials samples the soils and verifies that the site does not contain lead and arsenic and organochlorine pesticides at concentrations above the MTCA cleanup levels.

Dated this 24th day of September, 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.