

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

RECEIVED

IN THE MATTER OF

CUP 2018-460

CHELAN COUNTY PUD NO. 1

MAR 13 2019

CHELAN COUNTY

COMMUNITY DEVELOPMENT

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECISION AND CONDITIONS  
OF APPROVAL

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on March 6, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

**FINDINGS OF FACT**

1. This is an application for a Conditional Use Permit has been requested by the Chelan County PUD for the installation of a new 35,200 gallon water reservoir with 7 foot chain-link security fencing and to improve the existing access road. The application proposes to replace four (4) small water tanks that were placed prior to Chelan County PUD taking ownership. The smaller tanks are located on the adjacent parcel to the west which is under private ownership. The application proposes to relocate a portion of the existing access road; mitigation is proposed by replanting the abandoned portion of the road with native plants.
2. The applicant/owner is Chelan County PUD No. 1, PO Box 1231, Wenatchee, WA 98807.
3. The subject site is located at NNA Mathews Road, Wenatchee, WA 98801.
4. The parcel number for the subject property is 21-20-03-340-055.
5. The subject site is located in Chelan County, outside of an Urban Growth Area.
6. The Comprehensive Plan designation and zoning designation for the subject site is Rural Residential/Recreational 5 (RR5).
7. Chelan County GIS map layer indicates that the subject property is located within a potential geologic hazard area. Therefore, the provisions of CCC, Chapter 11.86 apply to the project.
8. A copy of the submitted geological site assessment performed by Nelson Geotechnical, LLC on December 17, 2017 should be provided with building permit application.
9. The lot was recently created per BLA 2018-459 and is currently vacant.
10. The site size is 0.06 acres per Chelan County Assessor's records.
11. The subject property is granted legal access through recorded easement, AFN: 2489823.
12. The surrounding area of the project is moderately sloping to the northeast and covered in sparse coniferous trees, shrubs, and grasses.
13. The project area is located within a large parcel under private ownership. The zoning is Rural Residential/Recreational 5 (RR5).

14. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped December 27, 2018; the proposed project does not require a vulnerability report, pursuant to Chelan County Code Chapter 11.82.
15. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does not contain any identified habitat. Therefore the provisions of Chelan County Code Chapter 11.78, do not apply.
16. According to the Natural Resources Stream Typing Maps, no riparian areas and/or their buffers are identified within the subject property.
17. Chelan County GIS map layer indicates that the subject property is located within a potential geologic hazard area; therefore, the provisions of CCC, Chapter 11.86 apply to the project.
18. A copy of the submitted geological site assessment performed by Nelson Geotechnical, LLC on December 17, 2017 should be provided with building permit application.
19. Pursuant to the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, no wetlands are indicated on or adjacent to the subject property. Therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
20. There are known cultural resources within close proximity to the subject property. Therefore, precautionary measures should be observed during ground disturbing activities.
21. Applicant plans to begin construction April 2019 with the project completed by June 2019.
22. Domestic water is provided by Chelan County PUD No. 1.
23. Power is provided by Chelan County PUD No. 1.
24. Noise is similar to other public uses. The Applicant must comply with Chelan County Code Chapter 7.35 Noise.
25. The use of the property is not changing from a public utility so the surrounding properties are not being subjected to unknown impacts.
26. The Notice of Application was referred to surrounding property owners within 1,000' (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on January 20, 2019 with comments due February 3, 2019. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received:
  - 26.1 Chelan County Fire District No. 1 responded on January 19, 2019
  - 26.2 Chelan County Fire Marshall responded January 30, 2019
  - 26.3 Chelan County Public Works responded on February 1, 2019
  - 26.4 Confederated Tribes of Colville responded on January 24, 2019
27. The following agencies were notified but did not respond:
  - 27.1 Chelan County Building Official
  - 27.2 WA Department of Archaeology and Historic Preservation
  - 27.5 Yakama Nation
  - 27.6 Chelan County Natural Resources

28. No public comments were received.
29. The application materials were submitted December 27, 2018.
30. A Determination of Completeness was issued on January 16, 2019.
31. The Notice of Application was provided January 20, 2019.
32. Notice of Public Hearing was provided February 22, 2019.
33. Pursuant to WAC 197-11-800(6) of the State Environmental Policy Act (SEPA), the proposed action is not categorically exempt from environmental review and a threshold determination. A copy of the SEPA Checklist was submitted with application; a Determination of Non-Significance was issued by Chelan County PUD as lead agency on May 17, 2018.
34. Uses appropriate for the Rural Residential/Recreational 5 (RR5) zoning district, identified in the Comprehensive Plan, include open space; residential; agriculture; and forestry. The rural community should expect rural governmental services such as public water reservoirs. The accessibility to general utilities makes the development of the intended uses in the RR5 zoning district obtainable. The proposed water reservoir facility is consistent with the goals and policies of the Rural Element of the Comprehensive Plan.
35. The Chelan County Comprehensive Plan goals and policies provided for use and protection of mineral resource activities in the Rural Industrial designation, page RU 24. The application is consistent with the Chelan County Comprehensive Plans.
36. The project is consistent with Chelan County Code (CCC) Section 11.93.040(1) in the following respects:
  - 36.1 Criteria for a high-impact utility facility are addressed below.
  - 36.2 Based on review of the application materials submitted, the criteria for a high impact utility can be satisfied.
37. The project is consistent with Chelan County Code (CCC) Section 11.93.040(2) in the following respects:
  - 37.1 The proposed development is located in the Rural Residential/Recreational 5 (RR5) zoning district. The RR5 zoning district permits high impact utility as a Conditional Use. The site plan of record, date stamped December 27, 2019, demonstrates the proposed water reservoir would meet applicable zoning setbacks identified in Chelan County Code, Section 11.12.020.
  - 37.2 Water utility facilities are not listed in Chapter 11.90 parking standards. Pursuant to Chelan County Code, Section 11.90.70, the most comparable use of manufacturing, assembly, freight terminal, wholesale, packing, storage, warehouse, requires one parking space per employee at peak shift time.
  - 37.3 Landscaping is required per Chelan County Code Chapter 15.50. Pursuant to Chelan County Code Section 15.50.050, variations in landscaping may be permitted including the allowance for the use of fencing for part or as a replacement for required landscaping area. Additionally, Chelan County Code Section 15.50.055(5), states the administrator may waive all or part of the landscaping requirement for safety considerations.

- 37.4 Based on the site plan of record, date stamped December 27, 2019, the proposed project meets applicable zoning and critical areas regulations. Being as this is a public utility, it is beneficial for the security fencing to remain unobstructed by landscaping. Staff recommended as a condition of approval the landscaping requirement to be waived.
38. The project is consistent with Chelan County Code (CCC) Section 11.93.040(3) in the following respects:
- 38.1 The subject property is located completely within a large, privately owned parcel; there is an existing water system located on the private parcel previously owned by the PUD prior to the 2018 Boundary Line Adjustment (BLA 2018-459, AFN: 2490397). The existing water reservoirs on adjacent parcel are proposed to be removed as part of this application.
- 38.2 The proposed use of the property is not changing the existing use. The property is and was used as a public water facility with a public benefit for surrounding properties. Although it is not a directly residential use, it is in a rural area and is necessary for development.
39. The project is consistent with Chelan County Code (CCC) Section 11.93.040(4) in the following respects:
- 39.1 Site restoration through mitigation planting is proposed to mitigate impacts that may be caused to the natural environment.
- 39.2 The project site is not identified as a classified resource land per the Chelan County Comprehensive Plan.
- 39.3 The applicant has proposed mitigation measures to protect the natural environment are proposed with application to alleviate impacts that may occur. Staff recommends as a condition of approval that the provided site restoration plan be required.
40. The project is consistent with Chelan County Code (CCC) Section 11.93.040(5)(a) in the following respects:
- 40.1 Chelan County provided a Notice of Application to all providers; received comments are included in the file of record.
- 40.2 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
41. The project is consistent with Chelan County Code (CCC) Section 11.93.040(5)(b) in the following respects:
- 41.1 The development does not access off a county road, therefore, this does not apply.
- 41.2 The proposed development will not result in county facilities reduced below adopted levels of service.
42. The project is consistent with Chelan County Code (CCC) Section 11.93.040(6) in the following respects:
- 42.1 The application includes fencing the proposed water reservoir to ensure limited public access.
- 42.2 The proposed development will not have an adverse impact on public health, safety and welfare.

43. The project is consistent with Chelan County Code (CCC) Section 11.93.040(7) in the following respects:
- 43.1 Roads, ingress and egress: The subject property is accessed off of a recorded access easement, AFN: 2489823.
  - 43.2 Stormwater: The applicant shall comply with Chelan County Code Title 13; Chelan County Stormwater Guidelines and Procedure.
  - 43.3 Parking and Loading: Public utility facilities are not listed in Chelan County Code Chapter 11.90 parking standard, therefore Chelan County Code Chapter 11.90.070 the most comparable use of manufacturing, assembly, freight terminal, wholesale, packing, storage, or warehouse requires one parking space per employee at peak shift time.
  - 43.4 Domestic and Irrigation Water: The proposal is a domestic water service.
  - 43.5 Sanitary Facilities: The proposal does not require sanitary systems.
  - 43.6 Power: Power is provided by Chelan County PUD.
  - 43.7 Fire Protection: Fire protection is provided by Chelan County Fire District 1.
  - 43.8 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
44. The project is consistent with Chelan County Code (CCC) Section 11.93.040(8) in the following respects:
- 44.1 Noise and Vibration: Noise and vibration will be temporary during construction of the improvements. Construction noise is regulated by Chelan County Code Section 11.88.190 and Chelan County Code Chapter 7.35.
  - 44.2 Light and Glare: No lights proposed.
  - 44.3 Heat, Steam, Odors, Smoke and Dust: The current and proposed development will not generate heat, steam or odors.
  - 44.4 Erosion: The subject property is located within a geologically hazardous area for erosive soils; a geological assessment was submitted with application. Staff is recommending full compliance with the provided geological site assessment.
  - 44.5 Water Quality: The proposed development is intended to improve public water system availability and quality.
  - 44.6 Wastes and Physical Hazards: No hazards identified.
  - 44.7 Electrical Disturbance: The proposal will not result in electrical disturbances.
  - 44.8 Based on the above facts, noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties can be avoided or mitigated as conditioned.
45. The project is consistent with Chelan County Code (CCC) Section 11.93.040(9) in the following respects:
- 45.1 The proposed water reservoir facility is consistent with the goals and policies of the Rural Element of the Comprehensive Plan.

- 45.2 The project is consistent with the Chelan County Comprehensive Plan.
46. The project is consistent with Chelan County Code (CCC) Section 11.93.180 (1) in the following respects:
- 46.1 Per application materials, no equipment is proposed to be stored on sight nor are storage buildings proposed.
- 46.2 Neither equipment nor storage buildings will be constructed; therefore this provision does not apply.
47. The project is consistent with Chelan County Code (CCC) Section 11.93.180 (2) in the following respects:
- 47.1 Per application materials, no equipment is proposed to be stored on sight nor are storage buildings proposed.
- 47.2 Does not apply.
48. The project is consistent with Chelan County Code (CCC) Section 11.93.180 (3) in the following respects:
- 48.1 The site plan dated December 27, 2018, shows a 7 foot chain-link security fencing with an entrance gate is proposed to be installed around the water reservoir.
- 48.2 Security fencing is proposed; therefore, this criterion can be satisfied.
49. The project is consistent with Chelan County Code (CCC) Section 11.93.180 (4) in the following respects:
- 49.1 The use shall be landscaped per the requirements of Chapter 15.50 of this code.
- 49.2 Landscaping is required per Chelan County Code Chapter 15.50. Pursuant to Chelan County Code Section 15.50.050, variations in landscaping may be permitted including the allowance for the use of fencing for part or as a replacement for required landscaping area.
- 49.3 Additionally, per Chelan County Code Section 15.50.055(5), the administrator may waive all or part of the landscaping requirement for safety considerations.
- 49.4 Being a public utility, it is beneficial for the security fencing to remain unobstructed by landscaping; therefore, staff is recommending as a condition of approval the landscaping requirement to be waived.
50. The project is consistent with Chelan County Code (CCC) Section 11.93.180 (5) in the following respects:
- 50.1 The minimum lot size in the district that a utility use is located in may be waived on a finding that the waiver will not result in noise or other detrimental effects to adjacent properties.
- 50.2 When the minimum lot size is waived, a notice to title shall be recorded with the Chelan County auditor stating that the parcel is not an allowable building site other than for a permitted utility use.
- 50.3 Pursuant to Chelan County Code Section 11.12.020, the subject property does not meet the zoning minimum lot size of 5 acres.

- 50.4 A Notice to Title will be required to be recorded with the Chelan County Auditor stating that the subject property with the water reservoir facility is not an allowable building site and is to be used solely for the permitted public utility purpose.
51. The project is consistent with Chelan County Code (CCC) Section 11.93.180 (6) in the following respects:
- 51.1 The hearing examiner may impose additional requirements to address issues such as, but not limited to, noise, public health and safety, vehicular access, and odor.
- 51.2 The recommended Conditions of Approval are provided for consideration by the Hearing Examiner.
52. The applicant is requesting a conditional use permit for the installation of new 35,200 gallon water reservoir with 7 foot chain-link security fencing and to improve the existing access road. The existing reservoirs are located on the adjacent parcel to the west which is under private ownership; the reservoirs and waterline are to remain in service until the new reservoir is serviceable.
53. Site restoration is proposed as a measure to mitigate the impacts the construction may have on the subject property as well as the adjacent property; this mitigation will be done through planting of native plants and grasses. The access road is to be partially relocated and improved in order to allow for adequate access to and from the proposed reservoir.
54. High impact utilities are permitted in the Rural Residential/Resource 5 (RR5) zoning district as a Conditional Use.
55. Staff reviewed the applications and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code, staff recommends **APPROVAL** subject to Recommended Conditions of Approval.
56. An open record Public Hearing after due legal notice was held on March 6, 2019.
57. Appearing and testifying on behalf of the Applicant was Steve Vaughn. Mr. Vaughn testified that he was an agent authorized to appear and speak on behalf of the property owner, the Chelan County PUD No. 1. Mr. Vaughn submitted Exhibit 1 which is a March 5, 2019 memorandum from Archaeological Investigations Northwest, Inc. to Jennifer Burns, Environmental Program Manager for the Chelan County PUD No. 1. This report sets forth facts and makes a recommendation and offers the opinion that there is a low potential for the site containing pre-contact archaeological resources. AINW recommended no further archaeological investigations for this site. Mr. Vaughn further testified that all proposed conditions of approval were acceptable to the Applicant.
58. Testifying from the public was:
- 58.1 John Black. Mr. Black testified that he is a neighbor of the site. He asked that the old tanks be retained and converted to irrigation use.

## CONCLUSIONS

1. The Hearing Examiner has authority to render this Decision.
2. Referral agency comments were received and considered in the review of this proposal.

3. The site of the subject proposal is in the proximity of the Chelan County Comprehensive Plan Rural Residential/Recreational 5 (RR5) land use designation. As described, the proposal is consistent with the Chelan County Comprehensive Plan.
4. As conditioned, the subject proposal is consistent with the Chelan County Code, Title 11.
5. Environmental and Critical Areas review has been completed. As conditioned, the proposal does not have negative impacts on critical areas which cannot be mitigated.
6. The authorization of the shoreline permits will not be materially detrimental to the purposes of the Revised Code of Washington, the Washington Administrative Code, the Chelan County Shoreline Master Program, the Chelan County Comprehensive Plan, the Chelan County, or not be otherwise detrimental to the public interest.
7. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

## **DECISION**

Based upon the above noted Findings and Fact and Conclusions, Conditional Use CUP 2018-460 is hereby **APPROVED**.

## **CONDITIONS OF APPROVAL**

All conditions imposed by this decision shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.

1. Pursuant to Chelan County Code Section 11.93.080, the granting of a conditional use permit and the conditions set forth runs with the land; compliance with the conditional use permit is the responsibility of the current owner of the property, whether that is the applicant or a successor.
2. The subject property and conditional use permit shall conform to the comments and conditions of approval as found in the Chelan County Public Works Agency Comment response dated February 1, 2019 (Exhibit A).
3. An Inadvertent Discovery Plan shall be submitted with the building permit application and kept onsite during all land disturbing activities; a sample of this plan is attached as Exhibit B.
4. Pursuant to Chelan County Code Section 11.93.090, upon final action of the hearing examiner to deny an application for a conditional use permit, the department shall not accept filing of an application for substantially the same matter within one year from the date of the final denial of the application.
5. Pursuant to the requirements of the International Building Code and International Fire Code, a Chelan County Commercial Building Permit shall be required for the proposed water reservoir and 7-foot security fence.
6. Pursuant to Chelan County Code Section 11.90.070, the applicant shall provide one parking space; parking spaces shall be designed to the standards of Chelan County Code Section, 11.90.030.
7. Pursuant to Chelan County Code Section 15.50.055, no landscaping shall be required.
8. Pursuant to Chelan County Code Section 11.86.020, a geologic site assessment shall be required at the time of building permit application.



9. Pursuant to Chelan County Code Section 11.93.180(2), no equipment storage shall be permitted on-site.
10. Pursuant to Chelan County Code Section 11.93.180(5)(B), a Notice to Title shall be recorded with the Chelan County Auditor stating that the subject property with the water reservoir facility is not an allowable building site and is to be used solely for the purpose of the permitted public utility.
11. Pursuant to Chelan County Code Section 11.93.040(10), the final Conditional Use Permit shall be in conformance with the submitted application of record, including site plan and site restoration plan, date stamped December 27, 2018.
12. Pursuant to Chelan County Code Section 11.93.110, a conditional use permit shall become void if not acted upon, including but not limited to submitting a building permit or the placement of all infrastructure, within three years after approval or such other time period as established by the hearing examiner. The applicant may request a one-year extension, to be reviewed administratively, if the applicant submits a written request with community development thirty days prior to expiration.
13. Pursuant to Chelan County Code Section 11.93.120, action of the Hearing Examiner is final, unless appealed pursuant to the judicial appeal provisions of Title 14 of the Chelan County Code.

Approved this 11<sup>th</sup> day of March, 2019.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

**Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.**

**Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.**

The complete case file, including findings, conclusions, and conditions of approval (if any) is available for inspection during the open office hours at Chelan County Department of Community Development. Their address is 316 Washington Street, Suite 301, Wenatchee, WA 98801. Their telephone number is (509) 667-6225.