

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

CUP 2019-001

Chelan County PUD No. 1

RECEIVED

MAY 03 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 May 1, 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 for the installation of an approximately 250,000 gallon domestic water reservoir to support Rock Island Dam maintenance facilities, including fire protection. The existing reservoir is not large enough to meet fire flow requirements for future development. The proposed 32 ft. diameter x 55 ft. tall reservoir will have a drain and overfill pond as well as new 6 ft. security chain-link fencing; the fence will be placed to allow at least 15 ft. clearance around the new reservoir. Waterlines to service the proposed reservoir have previously been installed. The existing reservoir and waterline are to be decommissioned and abandoned upon completion of the proposed project.
2. The owner is Chelan County PUD No. 1.
3. The subject site is located at 1476 Rock Island Dam Rd., Malaga, WA 98828.
4. The parcel number for the subject property is 21-22-05-000-050
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 Industrial (RI).
7. The property is currently used to support the operation of Rock Island Dam. Current structures/development includes crew buildings, parking lots, storage buildings, maintenance buildings and workshops. These buildings are served by underground utilities including water, wastewater, communications and electricity.
8. The following permits have been issued for the site:
  - 8.1 BP 170475 for a new 20,234 sq. ft. storage building for storage of turbine and generator parts.
  - 8.2 SDP 2018-140 for improvements to the existing Rock Island Dam facilities taking place within shoreline jurisdiction.
  - 8.3 BP 180527 for a new pump systems building.
  - 8.4 BP 190121 for a new 5,524 sq. ft. staff facility; permit still in review.

8.5 BP 190122 for a new 22,800 sq. ft. warehouse facility; permit still in review.

9. Prior to 1994, the Department's building permit records may be incomplete. Therefore, structures built prior to 1994 may or may not have received a building permit. If there is no record of a building permit found in the Department's files for a structure built prior to 1994, this structure may be considered a legally established structure. Because of this policy, all existing structures on the property which were established prior to 1994 are considered legally established
10. The vegetation and habitat conditions on the property are somewhat degraded due to the industrial nature of the existing facilities (adjacent to a hydroelectric dam). Where undisturbed, there is typical shrub-steppe vegetation including sagebrush and bunchgrasses. The site does not provide high quality habitat for upland species.
11. The property to the north of the subject site is the Columbia River.
12. The property to the south of the subject property is vacant land owned by Alcoa Wenatchee, LLC and is zoned Rural Residential/Resource 5 (RR5).
13. The property to the east of the subject site is land owned by Bureau of Land Management and is zoned Rural Industrial (RI).
14. The property to the west of the subject property is vacant land owned by Alcoa Wenatchee, LLC and is zoned Rural Industrial (RI).
15. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped January 22, 2019; the proposed project does not require a vulnerability report, pursuant to Chelan County Code Chapter 11.82.
16. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does contain identified bald eagle habitat. Therefore the provisions of Chelan County Code Chapter 11.78, do apply.
17. According to the Natural Resources Stream Typing Maps, no riparian areas and/or their buffers are identified within the project area.
18. 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.
19. A geological site assessment will be required to be provided with building permit application.
20. 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.
21. The application indicated that DAHP site #45CH204 is located on the subject property. However, the proposed water reservoir is not located within the identified DAHP site.
22. Applicant plans to begin construction in late spring of 2019 and complete by late fall of 2019.
23. The subject property is granted legal access through recorded easement, AFN: 2492321.
24. Water to the subject property is supplied by Chelan County PUD.
25. Chelan County PUD provides electrical services to the subject site.
26. Noise is similar to other public uses. The applicant must comply with Chelan County Code Chapter 7.35 Noise.

27. The use of the property is not changing from a public utility so the surrounding properties are not being subjected to unknown impacts.
28. 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 March 15, 2019 with comments due March 29, 2019. Agency comments are considered by the Hearing Examiner and, when appropriate, are made Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received:
  - 28.1 Chelan County Fire Marshal responded on January 30, 2019.
  - 28.2 Chelan County Public Works responded on February 1, 2019.
29. The following agencies were notified but did not respond:
  - 29.1 Chelan County Building Official
  - 29.2 Fire District No. 1
  - 29.3 WA Department of Archaeology & Historic Preservation
  - 29.4 Yakama Nation
  - 29.5 Confederated Tribes of Colville
  - 29.6 Chelan County Natural Resources
30. No public comments were received.
31. The application materials were submitted on January 22, 2019.
32. A Determination of Completeness was issued on March 13, 2019.
33. The Notice of Application was provided on March 15, 2019.
34. The Notice of Public Hearing was provided on April 19, 2019.
35. 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 April 26, 2018.
36. The Comprehensive Plan has been reviewed for consistency with the project. Specifically the goals and policies for industrial development and siting criteria to the Rural Industrial zoning designation.
37. The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan.
38. The project is consistent with Chelan County Code (CCC) Section 11.93.040 (1) in the following respects:
  - 38.1 Criteria for a high-impact utility facility have been addressed below.
  - 38.2 Based on review of the application materials submitted, the criteria for a high impact utility can be satisfied.
39. The project is consistent with CCC Section 11.93.040(2) in the following respects:

- 39.1 The proposed development is located in the Rural Industrial (RI) zoning district. The RI zoning district permits high impact utility as a Conditional Use. The site plan of record, date stamped January 22, 2019, demonstrates the proposed water reservoir would meet applicable zoning setbacks identified in Chelan County Code, Section 11.26.020.
- 39.2 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.
- 39.3 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.
- 39.4 Based on the site plan of record, date stamped January 22, 2019, the proposed project meets applicable zoning and critical areas regulations. Considering 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.
- 40. The project is consistent with CCC Section 11.93.040(3) in the following respects:
  - 40.1 The subject property is currently used as a high impact utility facility. The parcel is large in size and the adjacent parcels are currently vacant.
  - 40.2 The proposed development on the property is not changing the existing use. The property is and was used as a public facility and the zoning of Rural Industrial allows for high impact utility facilities.
- 41. The project is consistent with CCC Section 11.93.040(4) in the following respects:
  - 41.1 The project is for upgrades at the existing Rock Island Dam facility and located within existing improved areas of the facility. The use is located outside of shoreline jurisdiction.
  - 41.2 The project site is not identified as a classified resource land per the Chelan County Comprehensive Plan.
  - 41.3 The proposed water reservoir is to be located within an existing improved area and outside of shoreline jurisdiction. As conditioned, the use will not be detrimental to the natural environment.
- 42. The project is consistent with CCC Section 11.93.040(5)(a) in the following respects:
  - 42.1 Chelan County provided a Notice of Application to all providers. Received comments are included in the file of record.
  - 42.2 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
- 43. The project is consistent with CCC Section 11.93.040(5)(b) in the following respects:
  - 43.1 The development does not access off a county road. Therefore, this does not apply.
  - 43.2 The proposed development will not result in county facilities reduced below adopted levels of service.
- 44. The project is consistent with CCC Section 11.93.040(6) in the following respects:

- 44.1 The application includes fencing the proposed water reservoir to ensure limited public access.
- 44.2 The proposed development will not have an adverse impact on public health, safety and welfare.
- 45. The project is consistent with CCC Section 11.93.040(7) in the following respects:
  - 45.1 Roads, ingress and egress: The subject property is accessed off of a recorded access easement, AFN: 2492321.
  - 45.2 Stormwater: The applicant shall comply with Chelan County Code Title 13; Chelan County Stormwater Guidelines and Procedure.
  - 45.3 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.
  - 45.4 Domestic Water: The proposal is a private water service.
  - 45.5 Sanitary Facilities: The proposal does not require sanitary systems
  - 45.6 Power: Power is provided by Chelan County PUD.
  - 45.7 Fire Protection: Fire protection is provided by Chelan County Fire District 1.
  - 45.8 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
- 46. The project is consistent with CCC Section 11.93.040(8) in the following respects:
  - 46.1 Noise and Vibration: Noise and vibration would 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.
  - 46.2 Light and Glare: Security lighting on wall quadrants are proposed with development. Light and glare is regulated by Chelan County Code Section 11.88.080.
  - 46.3 Heat, Steam, Odors, Smoke and Dust: The current and proposed development would not generate heat, steam or odors.
  - 46.4 Erosion: The subject property is located within a geologically hazardous area for erosive soils; a geological assessment was submitted with application.
  - 46.5 Water Quality: The proposed development is intended to improve the on-site water system availability; the completed reservoir would have no impact to the wells or aquifer.
  - 46.6 Wastes and Physical Hazards: No hazards identified.
  - 46.7 Electrical Disturbance: The proposal would not result in electrical disturbances.
  - 46.8 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.
- 47. The project is consistent with CCC Section 11.93.040(9) in the following respects:
  - 47.1 The proposed water reservoir facility is consistent with the goals and policies of the Rural Element of the Comprehensive Plan.

- 47.2 The project is consistent with the Chelan County Comprehensive Plan.
48. The project is consistent with CCC Section 11.93.180(1) in the following respects:
- 48.1 Per application materials, no equipment is proposed to be stored on sight nor are storage buildings proposed.
- 48.2 Neither equipment storage nor storage buildings are proposed; therefore this provision does not apply.
49. The project is consistent with CCC Section 11.93.180(2) in the following respects:
- 49.1 Per application materials, no equipment is proposed to be stored on sight nor are storage buildings proposed.
- 49.2 Neither equipment storage nor storage buildings are proposed; therefore this provision does not apply.
50. The project is consistent with CCC Section 11.93.180(3) in the following respects:
- 50.1 The site plan dated January 22, 2019 and letter from the applicant, indicates a 6 foot chain-link security fencing with an entrance gate is proposed to be installed around the water reservoir.
- 50.2 Security fencing is proposed; therefore, this criterion can be satisfied.
51. The project is consistent with CCC Section 11.93.180(4) in the following respects:
- 51.1 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.
- 51.2 Additionally, per Chelan County Code Section 15.50.055(5), the administrator may waive all or part of the landscaping requirement for safety considerations.
- 51.3 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.
52. The project is consistent with CCC Section 11.93.180(5) in the following respects:
- 52.1 Based on the application, the subject property is 401 acres. The minimum lot size for Rural Industrial zoning is based on Chelan-Douglas Health District standards for public/community water and sewage disposal.
- 52.2 The parcel exceeds the required lot size for the Rural Industrial zoning; additionally, the proposed use exceeds the required setbacks for the zoning and would therefore not result in noise or other detrimental impacts to adjacent properties.
53. The project is consistent with CCC Section 11.93.180(5) in the following respects:
- 53.1 The recommended Conditions of Approval were provided for consideration by the Hearing Examiner.
54. The proposed water reservoir is to replace an existing water reservoir that was not large enough to meet the fire flow requirements for the existing and future development of the Rock Island Dam facility. The new water reservoir includes an overflow drain with piping that outflows into a proposed overflow pond. With the new security fencing, the overall acreage of fencing would be

approximately 28 acres, an increase of 0.2 acres. The fence is to be placed with a 15 foot clearance around the new reservoir as well as a 16 foot wide vehicle gate.

55. The new reservoir is to be constructed approximately 30 feet from the existing. The existing reservoir and waterline are to be decommissioned and abandoned upon completion of the proposed project. Waterlines to service the proposed reservoir have previously been installed.
56. High impact utilities are permitted in the Rural Industrial (RI) zoning district as a Conditional Use.
57. Staff has 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 the attached recommended conditions of approval, which may be modified as appropriate in support of the decision of the Hearing Examiner.
58. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
59. An Open Record Public Hearing after due legal notice, was held on May 1, 2019.
60. Appearing and testifying on behalf of the Applicant was Ryan Peterson of RH2 Engineering. Mr. Peterson testified that he was an agent authorized to appear and speak on behalf of the property owner and the Applicant. Mr. Peterson 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.
61. No member of the public testified at this hearing.
62. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

### **CONCLUSIONS OF LAW**

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 Rural Industrial (RI) 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. 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 2019-001 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 March 26, 2019 (Exhibit A).
3. Pursuant to RCW 27.53.020, the owner/developer/contractor shall contact the Confederated Tribes of the Colville Reservation and the Washington State Department of Archaeology and Historic Preservation prior to any ground disturbing activities to arrange for a Secretary of Interior-qualified archaeologist to be present on site. If any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.
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.
  - 5.1 If the proposed 6-foot chain link fence with the barbed wire cap exceeds an overall height of 7 feet, a building permit shall be required.
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 11.88.080, security lights or any exterior lighting shall be low-intensity, non-flashing and designed to project toward the property or shall be shielded to keep light from directly projecting over property lines
10. Pursuant to Chelan County Code Section 11.93.180(2), no equipment storage shall be permitted on-site.



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 2<sup>nd</sup> day of May, 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.