

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

RECEIVED

IN THE MATTER OF

CUP 2019-009

Bear Mountain Water District

OCT 21 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 October 16, 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. An application for a Conditional Use Permit was submitted for the installation of new water reservoirs for the Hawks Meadow and Hawks Ridge developments, located on private property. The improvements for site #1 include the installation of a 50,000 gallon vertical cylindrical concrete reservoir to support the capacity of an existing 21,000 gallon concrete reservoir on site. The improvements for site #2 include the installation of two (2) 125,000 gallon vertical cylindrical concrete reservoirs. The two proposed reservoirs would replace the existing 21,000 gallon reservoir on site. The proposed project is to improve the existing Hawks Meadow and Hawks Ridge water system infrastructure. The current system is not sufficient for irrigation and fire flow provisions.
2. The owners are: site # 1, Robert Holt, 770 Hawks Meadow Rd., Chelan WA, and site #2, Steven Herman, 35525 SE 42nd St., Fall City, WA.
3. The agent is Doug Willcox, Bear Mountain Water District, 1101 Stan Willcox Rd, Palouse, WA 99161.
4. The subject sites are: site #1: 770 Hawks Meadow Rd., Chelan and site #2: NNA Hawks Meadow Rd., Chelan.
5. The parcel number for the subject properties are site #1: 27-22-17-430-200 and site #2: 27-22-20-240-060..
6. The legal descriptions and size are, site #1: Lot 8 as delineated on Hawk's Meadow Survey, AFN: 205269. The parcel is 20.09 acres. site #2: Lot 20 as delineated on Hawk's Meadow Survey, AFN: 2052696. The parcel is 20.01 acres.
7. The subject sites are located outside of an Urban Growth Area.
8. The Comprehensive Plan designation and Zoning designation for the subject sites are: site #1: Rural Residential/Resource 10 (RR10) and site #2: Rural Residential/Resource 20 (RR20).
9. Site 1 Specific Facts:
 - 9.1 The subject site contains a single-family residence, swimming pool, and hot tub. There is also a 21,000 gallon water reservoir.

The following permits have been issued for the site:

9.1.1 BP 990765 for a concrete water storage tank

- 9.1.2 BP 030297 for a single family residence with attached garage
- 9.1.3 BP 040068 for a swimming pool.
- 9.2 The site is relatively flat, with existing cold storage buildings on the property.
- 9.3 The site is located on a hillside that is vacant of much vegetation and residential development.
- 9.4 The property to the north of the subject site is Rural Residential/Resource 10 (RR10) zoning and sprawled residential.
- 9.5 The property to the south of the subject site is Rural Residential/Resource 20 (RR20) zoning and sprawled residential.
- 9.6 The property to the east of the subject site is Rural Residential/Resource 10 (RR10)/Rural Residential 20 (RR20) zoning and sprawled residential.
- 9.7 The property to the east of the subject site is Rural Residential/Resource 10 (RR10)/Rural Residential 20 (RR20) zoning and sprawled residential.
- 9.8 The applicant submitted an Aquifer Recharge Disclosure Form, date stamped July 17, 2019. The proposed project does not require a vulnerability report, pursuant to CCC Chapter 11.82.
- 9.9 Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject site does not contain identified mule habitat. Therefore the provisions of CCC Chapter 11.78 do not apply.
- 9.10 According to the Natural Resources Stream Typing Maps, the subject site is located adjacent to an N-type stream. Without a stream typing, the more restrictive of buffer widths would apply; the required riparian buffer is 150 ft. from OHWM.
- 9.11 However, pursuant to CCC Section 11.78.020(9), fire management within fish and wildlife habitat areas is exempt from the requirements of this chapter if required by consultation with the Chelan County Fire Marshal. Based on an email from Chelan County Fire Marshal dated September 27, 2019, the proposed reservoir capacity will meet the fire flow requirements for the development as well as provide water for wild land fire fighting. Therefore, the provisions of CCC Chapter 11.78 for riparian areas would not apply for the proposed project.
- 9.12 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.
 - 9.12.1 A geological site assessment was submitted with application.
- 9.13 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 CCC Chapter 11.80 Wetland Areas Overlay District do not apply.
- 9.14 There are no known cultural resource sites on the subject site. Pursuant to Revised Code of Washington (RCW) 27.53.020, if cultural resources are found, the applicant will be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes of the Colville Reservation, and Chelan County Community Development.

10. Site 2 specific facts:

- 10.1 The subject site is currently vacant of residential structures but does contain a 21,000 gallon water reservoir. No permits were found on file.
- 10.2 The site is located on a hillside that is vacant of much vegetation.
- 10.3 The property to the north of the subject site is Rural Residential/Resource 20 (RR20) zoning and sprawled residential.
- 10.4 The property to the south of the subject site is Rural Residential/Resource 20 (RR20) zoning and sprawled residential.
- 10.5 The property to the east of the subject site is Rural Residential/Resource 20 (RR20) zoning; sprawled residential.
- 10.6 The property to the west of the subject site is Rural Residential/Resource 20 (RR20) zoning and sprawled residential.
- 10.7 The applicant submitted an Aquifer Recharge Disclosure Form, date stamped July 17, 2019. The proposed project does not require a vulnerability report, pursuant to CCC Chapter 11.82.
- 10.8 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 CCC Chapter 11.78, do apply.
- 10.9 According to the Natural Resources Stream Typing Maps, no riparian areas and/or their buffers are identified within the project area.
- 10.10 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.
 - 10.10.1 A geological site assessment will be required to be provided with building permit application.
- 10.11 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 CCC Chapter 11.80 Wetland Areas Overlay District do not apply.
- 10.12 There are no known cultural resource sites on the subject property. Pursuant to Revised Code of Washington (RCW) 27.53.020, if cultural resources are found, the applicant will be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes of the Colville Reservation, and Chelan County Community Development.

11. Applicant plans to begin construction upon completion of the application.
12. The subject sites are granted legal access through private road, Hawks Meadows Rd.
13. Water to the subject property is supplied by Bear Mountain Water District.
14. Power is not applicable to this project.
15. Sanitation is not applicable to this project.
16. Noise is similar to other public uses. The applicant must comply with CCC Chapter 7.35 Noise.

17. The use of the property is not changing from a public utility so the surrounding properties are not being subject to unknown impacts.
18. The applicant submitted an environmental checklist on July 17, 2019. Pursuant to WAC 197-11 process and RCW 43-21C of the State Environmental Policy Act (SEPA), an environmental review and a threshold determination was completed, and a Determination of Non-significance (DNS) was issued on September 20, 2019. The SEPA Checklist and DNS are included within the file of record and adopted by reference.
19. The Notice of Application was referred to surrounding property owners within 300' (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on August 27, 2019 with comments due September 10, 2019. The following agencies provided comments:
 - 19.1 Chelan County Fire Marshal responded on September 27, 2019
 - 19.2 Chelan County Building Official responded on August 28, 2019
 - 19.3 Chelan-Douglas Health District responded on September 4, 2019
 - 19.4 Fire District No. 7 responded on September 9, 2019
20. The following agencies were notified but did not respond:
 - 20.1 WA Department of Archaeology and Historic Preservation
 - 20.2 Yakama Nation
 - 20.3 Confederated Tribes of Colville
 - 20.4 WA Department of Ecology
 - 20.5 Chelan County Natural Resources
21. No public comments were received.
22. The application materials were submitted on July 17, 2019.
23. A Determination of Completeness was issued on August 20, 2019.
24. The Notice of Application was provided on August 27, 2019.
25. The Notice of Public Hearing was provided on October 4, 2019.
26. The purpose of the Rural Residential/Resource 10 and Rural Residential/Resource 20 is to allow for low intensity rural development, agricultural and forestry uses which do not require the extension of services and infrastructure. These areas provide greater opportunities for protecting sensitive environmental areas and creating open space typical of a rural setting.
27. The Hearing Examiner finds that the project, as conditioned, is consistent with the Rural Element of the Comprehensive Plan.
28. The project is consistent with Chelan County Code (CCC) Section 11.93.040 (1) in the following respects:
 - 28.1 Criteria for a high-impact utility facility have been addressed below.
 - 28.2 Based on review of the application materials submitted, the criteria for a high-impact utility can be satisfied.
29. The project is consistent with CCC Section 11.93.040(2) in the following respects:
 - 29.1 The proposed development is located in the Rural Residential/Resource 10 (RR10) and Rural Residential/Resource 20 (RR20) zoning districts. The RR10 and RR20 zoning districts permit high impact utility as a Conditional Use. The site plans of record, date

- stamped July 17, 2019, demonstrates the proposed water reservoirs would meet applicable zoning setbacks identified in CCC Section 11.08.020 and CCC Section 11.10.020.
- 29.2 Water utility facilities are not listed in CCC Chapter 11.90 parking standards. Pursuant to CCC 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.
 - 29.3 Landscaping is required per CCC Chapter 15.50. Pursuant to CCC 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.
 - 29.4 Based on the site plan of record, date stamped July 17, 2019, the proposed project meets applicable zoning and critical areas regulations.
- 30. The project is consistent with CCC Section 11.93.040(3) in the following respects:
 - 30.1 The subject sites are currently used as a high impact utility facility to support residential development.
 - 30.2 The proposed developments on the sites are not changing the existing use. The sites are continuing to be used for the reservoir facility and the zoning of RR10 and RR20 districts allow for high impact utility facilities.
 - 31. The project is consistent with CCC Section 11.93.040(4) in the following respects:
 - 31.1 The project sites are not identified as a classified resource land pursuant to the Chelan County Comprehensive Plan.
 - 31.2 The proposed water reservoirs are to be located within an existing improved area. As conditioned, the use will not be detrimental to the natural environment.
 - 32. The project is consistent with CCC Section 11.93.040(5)(a) in the following respects:
 - 32.1 Chelan County provided a Notice of Application to all providers; received comments are included in the file of record.
 - 32.2 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
 - 33. The project is consistent with CCC Section 11.93.040(5)(b) in the following respects:
 - 33.1 Because the development does not access off a county road, this does not apply.
 - 33.2 The proposed development will not result in county facilities reduced below adopted levels of service.
 - 34. The project is consistent with CCC Section 11.93.040(6) in the following respects:
 - 34.1 The application includes fencing the proposed water reservoir to ensure limited public access.
 - 34.2 The proposed development will not have an adverse impact on public health, safety and welfare.
 - 35. The project is consistent with CCC Section 11.93.040(7) in the following respects:
 - 35.1 *Roads, ingress and egress:* The subject sites are accessed by a private road, Hawks Meadow Road as indicated on record of survey, AFN: 2052696.

- 35.2 *Stormwater:* The applicant shall comply with CCC Title 13; Chelan County Stormwater Guidelines and Procedure.
- 35.3 *Parking and Loading:* Public utility facilities are not listed in CCC Chapter 11.90 parking standard, therefore CCC Section 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.
- 35.4 *Domestic and Irrigation Water:* The proposal is a private water service.
- 35.5 *Sanitary Facilities:* The proposal does not require sanitary systems.
- 35.6 *Power:* Power is provided by Chelan County PUD.
- 35.7 *Fire Protection:* Fire protection is provided by Chelan County Fire District No.7.
- 35.8 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
- 36. The project is consistent with CCC Section 11.93.040(8) in the following respects:
 - 36.1 *Noise and Vibration:* Noise and vibration would be temporary during construction of the improvements. Construction noise is regulated by CCC Section 11.88.190 and CCC Chapter 7.35.
 - 36.2 *Light and Glare:* Light and glare is regulated by CCC Section 11.88.080.
 - 36.3 *Heat, Steam, Odors, Smoke and Dust:* The current and proposed development would not generate heat, steam or odors.
 - 36.4 *Erosion:* The subject sites are located within a geologically hazardous area for erosive soils; a geological assessment was submitted with application.
 - 36.5 *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.
 - 36.6 *Wastes and Physical Hazards:* No hazards were identified.
Electrical Disturbance: The proposal would not result in electrical disturbances.
 - 36.7 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.
- 37. The project is consistent with CCC Section 11.93.040(9) in the following respects:
 - 37.1 The proposed water reservoir facility is consistent with the goals and policies of the Rural Element of the Comprehensive Plan.
 - 37.2 The project is consistent with the Chelan County Comprehensive Plan.
- 38. The project is consistent with CCC Section 11.93.180(1) in the following respects:
 - 38.1 Based on the application materials, no equipment is proposed to be stored on site nor are storage buildings proposed.
 - 38.2 Neither equipment storage nor storage buildings are proposed; therefore this provision does not apply.
- 39. The project is consistent with CCC Section 11.93.180(2) in the following respects:

- 39.1 Based on the application materials, no equipment is proposed to be stored on site nor are storage buildings proposed.
- 39.2 Neither equipment storage nor storage buildings are proposed; therefore this provision does not apply.
- 40. The project is consistent with CCC Section 11.93.180(3) in the following respects:
 - 40.1 The site plans and project narrative dated July 17, 2019 do not indicate that the proposed water reservoirs will be fenced. The Hawks Meadow and Hawks Ridge Home Owner's Association oppose the idea of security fencing for aesthetic purposes. Landscaping as an alternative is desired as form of natural screening.
 - 40.2 As required by the Chelan County Code, the proposed water reservoir facilities shall be fenced in order to assure public safety and limited opportunity for public access.
- 41. The project is consistent with CCC Section 11.93.180(4) in the following respects:
 - 41.1 A landscaping plan is required to be designed in compliance with CCC Chapter 15.50. Pursuant to CCC 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.
 - 41.2 The proposed developments must be landscaped per the criteria of CCC Chapter 15.50.
- 42. The project is consistent with CCC Section 11.93.180(5) in the following respects:
 - 42.1 Based on the application materials, the subject properties are over 20 acres in size.
 - 42.2 The subject properties exceed the required lot size for the RR10 and RR20 zoning; additionally, the proposed developments exceed the required setbacks for the zoning districts and would therefore not result in noise or other detrimental impacts to adjacent properties.
- 43. The project is consistent with CCC Section 11.93.180(6) in the following respects:
 - 43.1 Staff recommended Conditions of Approval for consideration by the Hearing Examiner.
- 44. The proposed water reservoirs are to upgrade the existing infrastructure in order to adequately meet fire flow requirements for the Hawks Ridge and Hawks Meadow developments. The proposed water reservoir for site #1 will supplement the overall capacity of the existing 21,000 gallon water reservoir and the proposed reservoirs to be located on site #2 will replace the existing 21,000 gallon water reservoir.
- 45. High impact utilities are permitted in the Rural Residential/Resource 10 (RR10) and Rural Residential/Resource 20 (RR20) zoning districts as a Conditional Use.
- 46. 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 recommended **APPROVAL**.
- 47. An open record public hearing after due legal notice was held on October 16th, 2019.
- 48. At this open record public hearing, the entire planning staff file of record was admitted into the hearing record.
- 49. Appearing and testifying on behalf of the applicant was Doug Willcox. Mr. Willcox testified that he was an agent of the Bear Mountain Water District and not the property owners. Mr. Willcox

provided testimony as to the need for these water storage reservoirs. He further testified that fencing of the project areas, in this case, would serve no useful purpose because the entrance to the properties are gated and all electrical components of the facilities are contained within buildings next to the reservoirs.

50. Also appearing and testifying was Rich Plueger. Mr. Plueger is a home owner within the subdivision and is president of the home owners association. He stated that they are opposed to the fence. He stated that the fencing would be costly and that the construction of these new reservoirs is a significant expense to the members of the home owners association.
51. No member of the public testified at this hearing.
52. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
53. 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 Rural Residential/Resource 10 and Rural Residential/Recourse 20 land use designations. As described, the proposal is consistent with the Chelan County Comprehensive Plan.
4. The Chelan County Code, CCC 11.93.108(3) provides that the use shall be fenced. The use of the term "shall" means that fencing is mandatory and cannot be waived by the Hearing Examiner.
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. Subject to the Conditions of Approval, the project design is consistent with the Chelan County Shoreline Master Program requirements.
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 2019-009 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. Pursuant to Chelan County Code Chapter 13.16 and 13.18, the proposed developments shall comply with stormwater guidelines and procedures at time of building permit submittal.
3. Pursuant to RCW 27.53.020, if the applicant or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this application, the applicant/ agent shall immediately notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination. 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 reservoirs.
6. Pursuant to Chelan County Code Section 11.90.070, the applicant shall provide one parking space per water reservoir site; parking spaces shall be designed to the standards of Chelan County Code Section, 11.90.030.
7. Pursuant to Chelan County Code 11.93.180(3), the proposed water reservoirs, at both sites, shall be fenced.
8. Pursuant to Chelan County Code Chapter 15.50, a landscaping plan shall be required for both water reservoir sites.
9. Pursuant to Chelan County Code Section 11.86.020, a copy of the geologic site assessment shall be provided at the time of building permit application.
10. 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.
11. Pursuant to Chelan County Code Section 11.93.180(2), no equipment storage shall be permitted on-site.
12. 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 plans date stamped July 17, 2019.
13. 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.

14. 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 21st day of October, 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.