

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)
CUP 2019-012)
WSDOT)
RECEIVED)
FEB 07 2020)
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 February 5, 2020, 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 an after the fact Conditional Use Permit for the installation of a 24 ft. x 20 ft. concrete containment structure covered by a double-pitched roof. The structure is to protect the liquid de-icer storage tank from damage, which may result in accidental leaking of the tank contents, due to the weight of winter snow accumulation. The new structure has been constructed in an existing paved area. There is no additional impervious surface area. This Conditional Use Permit is an after the fact application in order to ensure compliance with issued building permit application, BP 190237 for the proposed roof structure.
2. The applicants is the WA State Dept. of Transportation (WSDOT), PO Box 47014, Olympia, WA 98504 and the agent is Cristen Miller, WSDOT Facilities, 2830 Euclid Ave., Building A, Wenatchee, WA 98801
3. The project location and parcel numbers are 23790 US Hwy 2, Leavenworth, WA 98826, 26-15-03-340-050.
4. The property is outside of an Urban Growth Area.
5. Existing land use is Rural Residential/Resource 5 (RR5).
6. The subject property is currently used as a high impact public facility with equipment storage on site. The following applications/permits have been issued for the site:
 - 6.1 CUP 711 for the Dept. of Highway's Berne Snow Camp Maintenance Facility, including an avalanche control office and a 2-car garage
 - 6.2 BP 950580 for 3 fuel tanks
 - 6.3 BP 060683 for a storage shed
 - 6.4 BP 070052 for a cell tower and equipment building
 - 6.5 BP 120454 for conversion of duplex into a storage building
 - 6.6 BP 190237 for a roof structure to cover the de-icer storage tank
7. This Conditional Use Permit is an after-the-fact application in order to ensure compliance with issued building permit application, BP 190237 for the proposed roofed containment structure. Per Director, Dave Kuhl, the proposed project is grant funded and required expense by June 2019. The

building permit for the project was issued provided an after-the-fact CUP was submitted and approved prior to final building inspection.

8. The legal description is: A portion of the S ½ of the SW ¼ of Section 3, Township 26N, Range 15 E.W.M. and the subject property is 11.25 acres per the Chelan County Assessors.
9. The property to the north of the subject property is undeveloped and is zoned Commercial Forest Lands (FC).
10. The property to the south of the subject property is US Hwy 2, state right-of-way and is zoned Rural Residential/Resource 5 (RR5).
11. The property to the east of the subject property is undeveloped and is zoned Commercial Forest Lands (FC).
12. The property to west of the subject property is Undeveloped Commercial Forest Lands (FC) zoning.
13. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped October 16, 2019. The proposed project does not require a vulnerability report, pursuant to CCC Chapter 11.82.
14. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does contain identified elk habitat. Therefore the provisions of CCC Chapter 11.78, do apply.
15. According to the Natural Resources Stream Typing Maps, there are indications of multiple N-type streams located on the subject property. Without a stream typing, the more restrictive of buffer widths would apply. The required riparian buffer is 150 ft. from OHWM. However, pursuant to CCC Section 11.78.020(4), maintenance, repair, or operation of existing legal structures, facilities or improved areas are exempt from CCC 11.78. Therefore, the provisions of CCC Chapter 11.78 for riparian areas would not apply for the proposed project.
16. Chelan County GIS map layer does not indicate that the subject property is located within a potential geologic hazard area. Therefore, the provisions of CCC Chapter 11.86 would not apply to the project.
17. Based on 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.
18. 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.
19. Construction of the proposed roofed containment structure has already commenced. The project is estimated to be completed upon issuance of this decision.
20. The subject property fronts and access of US Hwy 2, a state right-of-way.
21. Domestic water, power and sanitation are not applicable to this project.
22. Noise is similar to other public uses. The applicant must comply with CCC Chapter 7.35 Noise.
23. 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 WA State Dept. of Transportation as lead agency on September 9, 2019.

24. 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 November 19, 2019 with comments due September 3, 2019. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. No public comments for the application were received. The following is a list of Agencies who received notice and the date comments were received:
 - 24.1 Chelan County Building Official responded on November 22, 2019
 - 24.2 Chelan County Fire Marshal responded on December 2, 2019

25. The following agencies were notified but did not respond:
 - 25.1 Chelan County PUD
 - 25.2 WA Dept. of Natural Resources
 - 25.3 WA Dept. of Fish & Wildlife
 - 25.4 WA Dept. of Archaeology and Historic Preservation
 - 25.5 Yakama Nation
 - 25.6 Confederated Tribes of Colville
 - 25.7 Chelan County Natural Resources

26. The application materials were submitted on October 16, 2019.
27. A Determination of Completeness was issued on November 13, 2019.
28. The Notice of Application was provided on November 19, 2019.
29. The Notice of Public Hearing was issued on January 22, 2020.
30. The project is consistent with Chelan County Code (CCC) in the following respects:
 - 30.1 The purpose of the Rural Residential/Resource 5 land use designation is to allow for rural development consistent with the rural character. The proposed development is consistent with the Chelan County Transportation Element goal of maintaining existing transportation facilities by ensuring that they are in a state-of-good-repair to ensure their continued function which is critical to achieving county mobility goals.
 - 30.2 The road classification of US Hwy 2 is designed and constructed for mobility and long-distance travel as a way to link many major cities. The proposed development is crucial for ensuring the continued vehicle access, especially the freight network, on US Hwy 2, a state right-of-way that provides connections to multiple cities and counties
 - 30.3 The Hearing Examiner finds that the project, as conditioned, is consistent with the Rural Element as well as the Transportation Element of the Chelan County Comprehensive Plan.
31. The project is consistent with CCC Section 11.93.040 in the following respects:
 - 31.1 A conditional use permit may be approved only if all of the following review criteria and any special criteria listed in this chapter are met:
 - 31.1.1 All criteria required for a specific use by this chapter can be satisfied.
 - 31.1.2 Criteria a high impact public facility have been addressed below.
 - 31.1.3 Based on review of the application materials submitted, the criteria for a high impact public facility can be satisfied.
 - 31.2 The design standards of the zoning district within which the lot is located, critical area regulations, and all other applicable development standards and regulations can be met.

- 31.2.1 The subject property is located in the Rural Residential/Resource 5 (RR5); the RR5 zoning district permit high impact public facilities as a Conditional Use. The site plans of record, date stamped October 19, 2019, demonstrates the proposed roof structure would meet applicable zoning setbacks identified in CCC Section 11.12.020.
- 31.2.2 Public facilities are not listed in CCC Chapter 11.90 parking standards. Pursuant to CCC Section 11.90.70, the most comparable use to high impact public facility would be service and repair shops, which require one parking space per 600 sq. ft. of floor area. Based on the site plan of record, the proposed parking requirements could be met.
- 31.2.3 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.
- 31.2.4 Based on the site plans of record, date stamped October 19, 2019, the proposed use meets applicable zoning and critical areas regulations.
- 31.3 Compatibility with the adjacent uses and the protection of the character of the surrounding area.
 - 31.3.1 The subject property is currently used as a high impact public facility to support the WSDOT highway maintenance.
 - 31.3.2 The proposed roofed containment structure would not change the existing use. The subject property is continuing to be used as a highway maintenance facility and the zoning of RR5 district allows for high impact public facilities.
- 31.4 Detrimental impacts on the natural environment and productive use of surrounding natural resource lands can be mitigated or avoided.
 - 31.4.1 The subject property is not identified as a classified resource land pursuant to the Chelan County Comprehensive Plan.
 - 31.4.2 The proposed development would be located within an existing improved area. As conditioned, the use will not be detrimental to the natural environment.
- 31.5 No conditional use permit shall be issued without a written finding that:
 - 31.5.1 After adequate opportunity for review and comment, all providers of water, sewage disposal, schools, and fire/police protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
 - 31.5.2 Chelan County provided a Notice of Application to all providers. Received comments are included in the file of record.
 - 31.5.3 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
 - 31.5.4 No county facilities will be reduced below adopted levels of service as a result of the development.
 - 31.5.5 The development does not access off a county road, therefore, this does not apply.

- 31.5.6 The proposed development will not result in county facilities reduced below adopted levels of service.
- 31.6 The proposed use shall not result in undue adverse impacts affecting the public health, safety and welfare.
 - 31.6.1 Based on the application materials, the proposed roofed containment structure would provide a benefit by protecting the de-icer fluid tanks from damage caused by the weight of accumulated snow. By providing a containment area, should damage to the tank occur, the proposed structure would collect the leaking fluid.
 - 31.6.2 The proposed development would not have an adverse impact on public health, safety and welfare.
- 31.7 Adequate provisions have been provided for roads, ingress and egress, stormwater, parking and loading, domestic and irrigation water, sanitary facilities, power, fire protection, and other necessary facilities, improvements or services consistent with the requirements of Titles 11 and 15 of the Chelan County Code.
 - 31.7.1 Roads, ingress and egress: The subject property fronts and access off of US Hwy 2, a state right-of-way.
 - 31.7.2 Stormwater: Compliance with stormwater regulations were reviewed for with the application of BP 190237. No additional impervious surface is proposed; therefore, a stormwater drainage plan is not required.
 - 31.7.3 Parking and Loading: Public facilities are not listed in CCC Chapter 11.90 parking standards. Pursuant to CCC Section 11.90.70, the most comparable use to high impact public facility would be service and repair shops, which require one parking space per 600 sq. ft. of floor area. Based on the site plan of record, the proposed parking requirements could be met.
 - 31.7.4 Domestic and Irrigation Water: The proposal does not require a water source.
 - 31.7.5 Sanitary Facilities: The proposal does not require sanitary systems.
 - 31.7.6 Power: Power is provided by Chelan County PUD.
 - 31.7.7 Fire Protection: The proposed development is not located within an established Chelan County Fire District. However, based on comments received from the Chelan County Fire Marshal, dated December 2, 2019, alternative fire flow provisions are not necessary for this project, due to the nature of the use and the type of construction.
 - 31.7.8 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
- 31.8 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 and to the vicinity can be mitigated or avoided.
 - 31.8.1 Based on the application materials, the applicant has indicated that operations on the subject property would not impact adjacent properties in the vicinity with noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards, or any other related impacts.

- 31.8.2 Additionally, it has been noted that the adjacent properties are currently undeveloped and vacant of residential development.
- 31.8.3 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.
- 31.9 The granting of the proposed conditional use permit is consistent and compatible with the intent, goals, objectives and policies of the comprehensive plan, and any implementing regulation.
 - 31.9.1 The proposed addition to the public facility is consistent with the goals and policies of the Rural Element of the Comprehensive Plan.
 - 31.9.2 The project is consistent with the Chelan County Comprehensive Plan.
- 32. The project is consistent with CCC Section 11.93.190 in the following respects:
 - 32.1 General Requirements
 - 32.1.1 The minimum lot size in the district that a public facility is located in may be waived on a finding that the waiver will not result in noise or other detrimental effects to adjacent properties.
 - 32.1.2 Pursuant to CCC 11.12.020, the minimum lot size for the RR5 zoning district is 5 acres; the subject property according to the Chelan County Assessors data is 11.25 acres.
 - 32.1.3 Being as the subject property is larger than the zoning minimum for the RR5 zoning district, this provision of requiring a waiver would not apply.
 - 32.1.4 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.
 - 32.1.5 Based on the application materials, the Hearing Examiner finds that adverse impacts may be mitigated through the recommended conditions of approval.
 - 32.2 Schools
 - 31.2.1 The proposed use is not a school. Therefore the requirements of this section would not apply.
 - 32.3 Composting Facility, Solid Waste Transfer Station.
 - 31.3.1 The proposed use is not a composting facility or a solid waste transfer stations; therefore the requirements of this section would not apply.
 - 32.4 Public Agency Equipment Storage/Maintenance Yard.
 - 32.4.1 Equipment storage shall be within an enclosed building or behind a view-obscuring fence.
 - 32.4.2 Based on the application materials, all equipment is stored and maintained within enclosed buildings.
 - 32.4.3 As conditioned, all equipment storage would be required to continue to be stored in an enclosed building.
 - 32.4.4 The use shall be landscaped per the standards of Chapter 15.50, Title 15 of this code.

- 32.4.5 Pursuant to CCC 15.50.055, when the inclusion of significant existing vegetation is located on site and would result in as good as or better satisfaction of the purpose of this section, the administrator may waive the landscaping requirements.
 - 32.4.6 Based on aerial imagery, the subject property is surrounded and visually isolated from the highway and neighboring properties by mature forest vegetation.
 - 32.4.7 Being as the subject property is surrounded and visually isolated from the highway and neighboring properties, staff recommended a condition of approval that the landscaping requirement of CCC 15.50 be waived.
- 33. This Conditional Use Permit is an after-the-fact application in order to ensure compliance with issued building permit application, BP 190237 for the proposed roofed containment structure. Per Community Development Director, Dave Kuhl, the proposed project was grant funded and required expense by June 2019. The building permit for the project was issued provided an after-the-fact CUP was submitted and approved prior to final building inspection.
 - 34. The proposed roofed containment structure is to protect the de-icer storage tank from damage sustained from the weight of annual snow accumulation. The use of the WSDOT maintenance facility has been an existing use for years and the addition of the proposed structure would not change the use occurring on site. The new structure is constructed on an existing paved area, so no new imperious surface area is proposed with the addition. Additionally, the installation of the proposed structure would eliminate the potential of ground contamination due to a leak in the storage tank.
 - 35. 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 recommended APPROVAL subject to the recommended conditions of approval.
 - 36. An open record public hearing after legal notice was provided was held on February 5, 2020.
 - 37. The File of Record, Chelan County Department of Community Development Staff Report, and exhibits were received, admitted into the record and considered by the Hearing Examiner.
 - 38. The applicant did not appear at the open record public hearing. The applicant was provided prior written notice of the date, place and time for the open record public hearing.
 - 39. No member of the public attended this hearing
 - 40. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
 - 41. 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. Based on review of the application materials submitted, the criteria for a high impact public facility can be satisfied
- 3. Based on the site plans of record, date stamped October 19, 2019, the proposed use meets applicable zoning and critical areas regulations.

4. Being as the subject property is surrounded and visually isolated from the highway and neighboring properties, staff is recommending as a condition of approval that the landscaping requirement of CCC 15.50 be waived.
5. As conditioned, this project is consistent with the Chelan County Zoning Code.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions, CUP 2019-012 is hereby **APPROVED**, subject to the conditions of approval.

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.

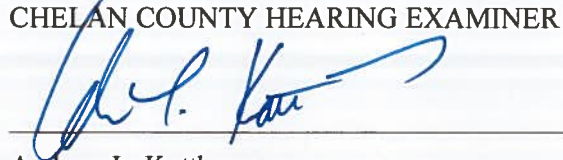
1. Pursuant to Chelan County Code Section 11.93.080, the granting of a conditional use permit and the conditions set forth runs with the land; compliance with the conditional use permit is the responsibility of the current owner of the property, whether that is the applicant or a successor.
2. Pursuant to 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.
3. 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.
4. Pursuant to Chelan County Code Chapter 15.50.055, no landscaping shall be required for the proposed development.
5. 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.
6. Pursuant to Chelan County Code Section 11.93.190(4)(A), all equipment storage shall be within an enclosed building.
7. 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 October 19, 2019.
8. 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.

9. 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 6th day of February, 2020.

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.