

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

CUPA 20-002

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JUL 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 July 1, 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 a Conditional Use Permit Amendment for the addition of (2) off-site agricultural worker housing duplexes. The proposed development is to occur in (2) phases. Each phase would include the construction of a 20 ft. x 60 ft. (1,200 sq. ft.) duplex with (4) parking spaces per structure.
2. The owner is John Fragnito, PO Box 1047, Chelan, WA 98816. The applicant/agent is Jonna Valdez, PO Box 1047, Chelan, WA 98816.
3. The subject site is located at 921 Apple Acres Rd., Chelan, WA 98816.
4. The parcel number for the subject property is 28-23-33-440-100. The legal description is: Lot A of BLA 2019-011, recorded April 8, 2019, under AFN: 2494174. Based on the recorded BLA, the subject property is approximately 28.42 acres
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 Commercial Agricultural Lands (AC).
7. The lot was recently processed through BLA 2019-011, and is currently used for commercial agriculture.
8. There was a building permit issued in March of 1998 (BP 970878) for a 4 bedroom agriculture worker housing structure. Based on the Assessor's records, the 1998 structure was to replace worker housing that burned down in 1991.
9. Phase 1 of development, CUP 2019-002, was approved by Chelan County Hearing Examiner on May 21, 2019 for the construction of a 1,200 sq. ft. agricultural worker housing duplex. The subject application is for Phase 2 and Phase 3.
10. The subject property has moderate slopes from South to North and majority of the property is in orchard.
11. The subject property is in AC zoning. The surrounding properties are used as residential and agriculture. All adjacent properties are zoned AC except for the property to the south which is zoned Rural Residential/Resource 2.5.
12. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped April 13, 2020. The proposed project does not require a vulnerability report, pursuant to CCC Chapter 11.82.

13. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does contain identified golden eagle and mule deer habitat. Therefore, the provisions of CCC Chapter 11.78, do apply.
14. Pursuant to the Federal Emergency Management Agency (FEMA), panel number 5300150075B of the FIRM maps, there is potentially floodplain on the subject property. Therefore, the provisions of CCC Chapter 11.84, Frequently Flooded Areas Overlay District and CCC Chapter 3.20, Flood Hazard Development, do apply.
15. According to the Natural Resources Stream Typing Maps, there were streams identified on site.
  - 15.1 A stream typing (ST 2019-005) report was prepared by Chelan County Natural Resources Department on March 27, 2019 and it was determined, no streams are present on site. Therefore, the provisions of CCC Chapter 11.78 as it applies to riparian areas do not apply.
  - 15.2 However, though no streams by definition are present on site, it should be noted that the blue lines depicted on the GIS map do indicate overland seasonal runoff. Therefore, runoff infrastructure should be installed and maintained if future building envelopes are proposed near the seasonal runoff sites.
16. 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. A copy of the geological site assessment performed by Donald Larsen was submitted with application. However, the report is not dated and the engineer's stamp has expired. Therefore, an updated geological site assessment will be required with building permit application.
17. Applicant plans to begin construction upon approval of application with the construction of Phase 3 being completed by May 2021.
18. The subject property fronts and accesses from Apple Acres Road, a public county right-of-way.
19. Water is provided via a private well. Well use agreement was recorded October 15, 2010, under AFN: 2331436. Based on comments from Chelan Douglas Health District, a Group B Water System application would be required for the existing well to serve the existing and proposed agricultural worker duplexes.
20. The subject property is currently serviced with power by Chelan County PUD. Based on comments from Chelan County PUD, electrical line extensions may be necessary to get power to the individual buildings based on location and size of the desired service.
21. New on-site septic systems are proposed.
22. Noise should be similar to other residential uses as well as noise associated with a commercial orchard operation. The applicant must comply with CCC Chapter 7.35 Noise.
23. The use of the property is not changing from commercial agriculture with seasonal agriculture worker housing. The surrounding properties would not be subjected to unknown impacts.
24. The Notice of Application was referred to surrounding property owners within 1,000 ft. (excluding 60 ft. of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on May 20, 2020, with comments due June 3, 2020. Agency comments are considered by the Hearing Examiner and, when appropriate, set forth in Conditions of Approval.
25. No public comments were received for the proposed development. The following is a list of Agencies who received notice and the date comments were received.

<b>Agencies Notified</b>	<b>Response Date</b>	<b>Nature of Comment</b>
Chelan County Fire Marshal	June 3, 2020	No objection to the project if subject to the recommended conditions; alternate fire flow provisions are necessary.
Chelan County Building Official	May 26, 2020	Development shall comply with applicable building codes as well as the provisions of CCC 3.20 Flood Hazard Development.
Chelan County Public Works		No Comment
Chelan Douglas Health District	June 5, 2020	Recommends further approval if subject to the proposed conditions.
Chelan County PUD	May 28, 2020	Electrical line extensions and necessary easements would be required; an engineering study may be required.
Fire District No. 7		No Comment
Chelan School District		No Comment
WA Dept. of Archaeology and Historic Preservation	June 3, 2020	Due to the project being in an area of high potential for archaeological resources, a cultural resource study is requested.
Yakama Nation		No Comment
Confederated Tribes of Colville		No Comment
WA Dept. of Ecology	May 29, 2020	If the applicant does/plans to draw more than 5,000 gallons of water per day, authorization obtained by WA Dept. of Ecology would be required.

26. The application materials were submitted on April 13, 2020.
27. A Determination of Completeness was issued on May 12, 2020.
28. The Notice of Application was provided on May 20, 2020.
29. The Notice of Public Hearing was provided on June 19, 2020.
30. Pursuant to WAC 197-11-800 of the State Environmental Policy Act (SEPA), the proposed action is categorically exempt from environmental review.
31. Uses appropriate for the Commercial Agricultural Lands (AC) zoning district, identified in the Comprehensive Plan, include agriculture, open space, residential, and forestry. The purpose is to

assure the long-term conservation of commercial agricultural lands, to protect and preserve the farmers ability to farm, encourage existing and future agricultural land uses as a viable land use and a significant economic activity within the community, and, to protect agricultural land of long term commercial significance not already characterized by urban development from encroachment and incompatible uses.

32. Pursuant to Policy 1.8 of the Agricultural Lands Goals and Policies which aims to support the viability of agriculture and encourage the continued use of rural and resource lands for agriculturally related uses. The policy aims to protect the economic viability of the agricultural industry by supporting construction of agricultural worker housing near orchard areas. Where permitted by state agencies, consider the reduction of site development and fire protection standards for temporary housing units for migrant workers, with the rationale, that this will assist the agricultural industry to remain economically viable, reduces transportation needs, and provides adequate housing for agricultural workers.
33. The proposed agriculture worker housing is consistent with the goals and policies of the Resource Element of the Comprehensive Plan.
34. Chelan County Code, Section 11.93.040, Conditional Use Permit Criteria: 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:
  - 34.1 All criteria required for a specific use by this chapter can be satisfied.
  - 34.2 Criteria for off-site agricultural worker housing has been addressed below.
  - 34.3 Based on review of the application materials submitted, the criteria for off-site agricultural worker housing is satisfied.
35. 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.
  - 35.1 The proposed development is located in the Commercial Agricultural Lands (AC) zoning district. The AC zoning district permits off-site agricultural worker housing as a Conditional Use.
  - 35.2 Pursuant to CCC Section 11.30.020(6), no new dwelling unit shall be placed within 100 ft. of a property zoned AC. The site plan of record, date stamped April 13, 2020, demonstrates the proposed duplexes to be used as worker housing would meet applicable zoning setbacks identified in CCC Section 11.30.020(6).
  - 35.3 Based on the site plan of record, the proposed project meets applicable zoning and critical areas regulations.
36. Compatibility with the adjacent uses and the protection of the character of the surrounding area.
  - 36.1 The subject property and surrounding properties are operating as orchards. Additionally, residential uses, such as agricultural worker housing, are permitted uses in AC zoning.
  - 36.2 The proposed use of the property would not change the existing use.
37. Detrimental impacts on the natural environment and productive use of surrounding natural resource lands can be mitigated or avoided.
  - 37.1 The proposed development of worker housing should not be detrimental to the agricultural resource land as it encourages the continued agricultural use, a protected resource

- 37.2 The proposed development would not be detrimental to the resource land of agriculture as it supports the productive use of agricultural lands.
38. The Hearing Examiner specifically finds that:
- 38.1 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.
- 38.2 Chelan County provided a Notice of Application to all providers. Received comments are included in the file of record.
- 38.3 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
- 38.4 The development, as conditioned, would not result in county facilities reduced below adopted levels of service.
39. The proposed use shall not result in undue adverse impacts affecting the public health, safety and welfare.
- 39.1 The proposed development, as conditioned, would not have an adverse impact on public health, safety and welfare.
40. 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.
- 40.1 Roads, ingress and egress: The subject property fronts and accesses off Apple Acres Road, a public county right-of-way.
- 40.2 Stormwater: The applicant shall comply with CCC Title 13, Chelan County Stormwater Guidelines and Procedure.
- 40.3 Parking and Loading: CCC Section 11.93.300, requires 1 parking space per dwelling unit. 4 parking spaces are proposed with each duplex. Therefore, the minimum requirement would be satisfied.
- 40.4 Domestic and Irrigation Water: The proposal is supplied domestic water via a private well.
- 40.5 Sanitary Facilities: On-site septic systems are to be utilized. Septic permits approved by Chelan Douglas Health.
- 40.6 Power: Power is provided by Chelan County PUD.
- 40.7 Fire Protection: Fire protection is provided by Chelan County Fire District 7.
- 40.8 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
41. 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.
- 41.1 Noise and Vibration: Noise and vibration will be temporary during construction of the improvements. Construction noise is regulated by CCC Section 11.88.190 and CCC Chapter 7.35.

- 41.2 Light and Glare: Lights appurtenant to residential development are regulated by CCC Section 11.88.080.
- 41.3 Heat, Steam, Odors, Smoke and Dust: The proposed development would not generate heat, steam or odors.
- 41.4 Erosion: The subject property is located within a geologically hazardous area for erosive soils. A geological assessment was submitted with application, but it will not be accepted with building permit as the report is not dated and the engineer's stamp has expired. Staff is recommending as a condition of approval that an updated geological site assessment be submitted with building permit application.
- 41.5 Water Quality: As conditioned, the proposed development would have to meet standards as required by Chelan Douglas Health District.
- 41.6 Wastes and Physical Hazards: No hazards identified.
- 41.7 Electrical Disturbance: The proposal would not result in electrical disturbances.
- 41.8 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.
- 42. 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.
  - 42.1 The proposed agricultural worker housing is consistent with the goals and policies of the Resource Element of the Comprehensive Plan.
  - 42.2 The project is consistent with the Chelan County Comprehensive Plan.
- 43. Chelan County Code, Section 11.93.300, Off-site Agricultural Worker Housing: Dwelling units are subject to all applicable building and health regulations.
  - 43.1 The proposed development is required to obtain a residential building permit from Chelan County Building Department. Prior to the issuance of the building permit, the project would be required to be approved by Chelan Douglas Health District for domestic water and sanitation.
  - 43.2 As conditioned, all applicable building and health regulations would be met.
- 44. The structures are compatible with surrounding land uses.
  - 44.1 The proposed development is in support of the surrounding orchard land. Additionally, residential dwellings are an allowable use per the Chelan County Comprehensive Plan.
  - 44.2 In order to be compatible with agricultural activities, CCC, Section 11.30.020, requires that no new dwelling unit shall be placed within 100 ft. of a property zoned AC.
  - 44.3 As conditioned, the proposed worker housing is compatible with the surrounding agricultural land uses.
- 45. The dwelling units are to be used to house agricultural workers and their families who are employed in an agricultural operation. A covenant shall be recorded in a form acceptable to the county that the housing is exclusively for the use of agricultural workers and their families.
  - 45.1 A Notice to Title would be required to be recorded with the Chelan County Auditor stating that the proposed worker housing located on the subject property is to be used solely for the purpose of housing agricultural workers and their families. The Notice to Title would be required to be submitted with building permit.

46. The height of the structure shall not exceed the limits set forth in the district.
  - 46.1 Commercial Agricultural Lands (AC) zoning has a maximum building height of 35 ft. Building height would be reviewed and approved at time of building permit submittal.
  - 46.2 As conditioned, the proposed worker housing would not exceed a building height of 35 ft.
47. Structures shall not exceed the lot coverage set forth in the district
  - 47.1 Commercial Agricultural Lands (AC) zoning district requires that buildings and structures shall not occupy more than 35% lot coverage. The subject property is approximately 28.42 acres which allows for approximately 433, 291 sq. ft. of lot coverage.
  - 47.2 Each proposed worker housing duplex is proposed at 1,200 total sq. ft.
  - 47.3 The existing structures along with proposed structures would not exceed the allowable lot coverage for the subject property.
48. In the industrial districts, agricultural worker housing shall not be used for year-long occupancy. Housing in these districts shall be used only for seasonal occupancy.
  - 48.1 The proposed development is not located in an industrial zoning district. Therefore, this provision does not apply.
49. An open record public hearing after due legal notice was held on July 1, 2020, via Zoom video conference.
50. Appearing and testifying was John Fragnito. Mr. Fragnito testified that he was the applicant and property owner. He indicated that all of the proposed conditions of approval were acceptable. He stated that there is already one duplex on the site and he simply wanted to add two more duplexes over the next three years.
51. No member of the public testified at the 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. Based on review of the application materials submitted, the criteria for an isolated small scale business could be satisfied.
3. Based on the site plan of record, the proposal meets applicable RR5 zoning regulations.
4. The proposed fire station addition would not change the use of the property. The property is and was used as a fire station for Chelan County Fire District No. 5 since 1995. Therefore the surrounding area would not be subjected to an unknown incompatible use.
5. Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
6. The proposed development, as conditioned, would not result in county facilities reduced below adopted levels of service.
7. The proposed development, as conditioned, would not have an adverse impact on public health, safety and welfare.

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.
9. 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 could be avoided or mitigated as conditioned.
10. The project is consistent with the Chelan County Comprehensive Plan.
11. Being as the subject property has been used as a fire station since 1995 and is larger than it was when it was originally permitted. Therefore, staff is recommending as condition of approval that the minimum lot size of 5 acres be waived for the proposed addition.
12. The Hearing Examiner finds that as conditioned, the proposed use would not result in adverse impacts. Therefore, the Hearing Examiner does not recommend that additional requirements be conditioned for the project.
13. As conditioned, all equipment storage would be required to continue to be stored in an enclosed building.
14. Being as the subject property is currently developed with view obstructing measures from 3 of 4 property lines. Therefore, staff is recommending that the landscaping requirement of CCC 15.50 be waived.
14. 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 CUPA 20-002 is hereby **APPROVED**, subject to the following 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, prior to ground disturbing activities, consultation with the Washington State Department of Archaeology and Historic Preservation (DAHP) shall be required.
  - 2.1. Documentation as provided by DAHP that this condition has been satisfied or is no longer applicable may be provided at time of building permit submittal.
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 the requirements of the International Building Code and International Fire Code, a Chelan County Residential Building Permit shall be required for each of the proposed agricultural worker housing duplexes.



- 4.1. Pursuant to CCC 3.20 & CCC 11.84, a floodplain development permit shall be required prior to or with submittal of a residential building permit to Chelan County Community Development, unless authorization from the Chelan County Building Official relinquishes this requirement.
  - 4.2. The proposed structures shall have Class A roofing materials.
  - 4.3. Adequate fire flow requirements shall be approved by the Chelan County Fire Marshal prior to the issuance of building permit.
5. Pursuant to Chelan County Code Section 11.93.300(3), a Notice to Title shall be recorded with the Chelan County Auditor stating that the proposed worker housing located on the subject property is to be used solely for the purpose of housing agricultural workers and their families.
  - 5.1. A copy of the recorded Notice to Title shall be submitted with each phase's building permit application.
6. Pursuant to Chelan County Code Sections 11.93.300(4) & (5), the building height and lot coverage shall not exceed the limits set forth in Chelan County Code, Section 11.30.020.
7. Pursuant to Chelan County Code Section 11.93.300(7), the following shall be demonstrated at time of or with building permit application:
  - 7.1. (1) parking space per residential unit, not within a required yard setback, shall be provided.
  - 7.2. Approved septic permit as issued by the Chelan Douglas Health District for each duplex unit.
  - 7.3. An approved Group B Water System application per Chelan Douglas Health District and/or authorization that domestic water service to the subject property is adequate.
  - 7.4. Duplex addressing as approved by Chelan County Public Works.
8. Pursuant to Chelan County Code Section 11.30.020(6), no new dwelling unit shall be placed within 100 ft. of a property zoned as Commercial Agricultural Lands (AC), except as modified by said section.
9. Pursuant to Chelan County Code Section 11.86.020, an updated geologic site assessment shall be required at 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 11.93.040(10), the final Conditional Use Permit shall be in conformance with the submitted application of record, including site plan date stamped April 13, 2020.
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 2nd day of July, 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.