

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW, CONDITIONS OF APPROVAL
CUP 2022-070)	AND DECISION
Hard Row to Hoe Winery)	
)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on June 1, 2022, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. An application for a Conditional Use Permit has been submitted by Todd Smith (agent) for a winery tasting room that would have more than 1,500 sq.ft. of retail space. The applicant is proposing to construct a new tasting room with case storage and outdoor seating that is approximately 5,000 sq.ft. in size for the Hard Row to Hoe Winery. Upon completion of construction of the new tasting room, the existing tasting room and wine production building would be converted into an office to be used for the winery operation. Road access improvements and additional parking were included in this proposal.
2. The Applicants/owners are Don and Judy Phelps (Hard Row to Hoe Winery), PO Box 159, Chelan, WA 98816. Their agent is Syndicate Smith LLC, 220 Hwy. 2, Leavenworth, WA 98826.
3. The subject property is located at 300 and NNA Ivan Morse Road, Manson, WA 98831.
4. The abbreviated legal description and parcel number of the subject property is 28-21-25-440-100: T 28 R 21 EWM S 25 SESE Lot B CE#2004-027; 24.85 Acres; 28-21-25-410-175: T 28N R 21EWM S 25 PT NENE TAX 13; 2.83 Acres.
5. The subject property is not within an Urban Growth Area.
6. Parcel 28-21-25-440-100 is zoned Commercial Agricultural Lands (AC) and Parcel 28-21-25-410-175 is zoned AC and Rural Residential/Resource 1 Dwelling Unit per 5 Acres (RR5). The structures and the winery only utilize the portions that are zoned AC for both properties.
7. The subject property slopes downward to the west towards Ivan Morse Road. The upper eastern portion is undeveloped and the western portion consists of an active vineyard that surrounds the existing structures utilized for the winery.
8. The subject property is currently developed as a winery with active vineyards surrounding the existing structures.
9. Permit History:
 - 9.1 BP-060259 – 290 sq.ft. deck
 - 9.2 BP-060536 – 24'x48' pole building for commercial/storage/aging of wine
 - 9.3 BP-100207 – 234 sq.ft. addition to tasting room (no fire marshal or final inspection was completed)

- 9.4 BP-120335 – 24'x24' roof structure for ag equipment storage (no fire marshal or final inspection was completed)
- 9.5 Change of use permits will be required for structures being converted to office space.
10. The property to the north is Ivan Morse Road / gravel pit and is zoned Commercial Mineral Lands (MC) and Rural Residential 1 Dwelling Unit per 5 Acres (RR5).
11. The property to the east is Mike Keys Road in agricultural and residential uses and is zoned Commercial Agricultural Lands (AC).
12. The property to the east is in agricultural use and is zoned AC and RR5.
13. The property to the west is Ivan Morse Road in agricultural and residential uses and is zoned AC.
14. According to WDFW PHS mapping, no Fish and Wildlife Habitat Conservation Areas currently exist on the property. Therefore, the provision of Chelan County Code Chapter 11.78 do not apply.
15. The water body shown on the Chelan County GIS mapping does not meet the requirements to be classified as a stream of any type per WAC 222-16-030. The water shown on the map is actually an irrigation canal and the requirements of Chapter 11.78 do not apply.
16. The subject site is located outside the shoreline jurisdiction. Therefore, the requirements of the Shoreline Master Program would not be applied.
17. Pursuant to the National Wetlands Inventory data, the subject site contains does not contain any wetlands. Therefore, the provisions of Chelan County Code Chapter 11.80 do not apply.
18. The applicant submitted an Aquifer Recharge Disclosure Form and a Vulnerability Rating sheet. The development is subject to Chelan County Code Chapter 11.82.
19. Pursuant to Federal Emergency Management Agency, FIRM map panel 5300150225A, the subject site does not contain flood plain. Therefore, the provisions of Chelan County Code Chapter 11.84 and 3.20 do not apply.
20. According to Chelan County GIS mapping, the subject property likely contains erodible soils and steep slopes. Therefore, pursuant to Chelan County Code Chapter 11.86, a geologic assessment is required. A geologic assessment, prepared by Don Phelps of Water Resources Engineering, was submitted with the application. This assessment concluded that the proposed action would not pose a risk to the subject property providing that the following three recommendations are implemented:
- 20.1 Do not exceed 1.5:1 on cut slopes or less than 2:1 on fill slopes.
- 20.2 Direct all surface runoff into the existing vineyards abutting the site location for infiltration.
- 20.3 Any fill material placed that will support structures shall be compacted to 95% of maximum density as measured by the Modified Proctor test, or other approved means.
21. Pursuant to RCW 27.53.020, if cultural resources are found during construction, the applicant will be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes, and Chelan County Community Development.
22. Commercial building permits would be required for the winery tasting room and the additional case storage. Construction is anticipated to commence upon completion of all required permits.
23. The primary access is from Ivan Morse Road, a County right-of-way. Chelan County Public Works is not requiring road improvements to Ivan Morse Road and no Traffic Impact Study is

- being required. However, the applicant is required to dedicate additional right-of-way to make the right-of-way on Ivan Morse Road 30 feet from centerline, or execute and record a "No Protest Agreement" agreeable to the County, as set forth in Condition of Approval No. 24.
24. Pursuant to Chelan County Code Title 15.30, the applicant will be required to construct the Private Internal Access road to meet a Rural Emergency Vehicle Access Road (Standard Plan PW-22) beginning at Ivan Morse Road and ending with an Emergency Vehicle Turnaround (Standard Plan PW-23 A or B) within the proposed project.
 25. The applicant will be required to show the dimensions and type of material proposed for the guest parking area on the CUP Site Plan for the proposed project. Prior to commencement of activities, the applicant shall provide Chelan County Public Works with a parking area, type of surface material proposed for the parking lot, number of parking spaces, and general parking schematic for the proposed project.
 26. Pursuant to Title 15.30.340 the applicant will be required to construct the access approaches onto Ivan Morse Road to meet the County's Industrial/ Commercial Driveway Approach (Standard Plat PW-26). The applicant will be required to obtain a Chelan County Approach Permit prior to constructing the Commercial Driveway Approach. The approach apron will be required to be paved.
 27. The applicant is required to submit construction plans and reports in accordance with Title 15. The plans must be submitted simultaneously under one Letter of Transmittal. The applicant will be required to have the Construction Plans approved by Chelan County Public Works Department prior to construction. The following are the minimum construction plan elements:
 - 27.1 Road Improvement Plan (including location of utilities).
 - 27.2 Erosion and Sedimentation Control Plan.
 - 27.3 Lot Access Plan.
 - 27.4 Drainage Report & Plan.
 28. Existing structures on the property are served by the Chelan County PUD. A line extension or facility modification will be necessary for the proposed winery and associated easements will be required; the owner will need to apply with the Chelan County PUD at the time of building permit submittal.
 29. Commercial domestic water is currently served by the Lake Chelan Reclamation District and infrastructure improvements may be required.
 30. The existing are served by on-site septic system which was previously permitted by the Chelan-Douglas Health District. A new septic permit will be required for the proposed winery tasting room.
 31. Pursuant to Chelan County Code Title 13.18, A Drainage Report & Plan will be required to be submitted to Chelan County Public Works if any new impervious surface of 5000 square feet is created and must be reviewed and approved. This shall be completed during the submittal of any building permits.
 32. The project is within Fire District #5. The Fire District Chief comments state that there is adequate fire flow to serve this project. The Chelan County Fire Marshal will require the proposal to comply with all adopted fire codes. Commercial buildings shall be reviewed for fire compliance annually, access shall be designed for fire apparatus, and fire-flow shall be approved by the Fire Marshal.

33. The applicant is required to meet the Chelan County Code Chapter 7.35 for noise controls. During normal operations, noise impacts are similar to surrounding uses. Commercial operation and events shall meet the requirements of WAC 173-60. The Hearing Examiner sets as a condition that noise impacts to the surrounding properties be evaluated during the required 1 and 5 year compliance review.
34. The existing winery structures are visible from Ivan Morse Road. The proposed winery tasting room will be located on the subject property above the existing structures, so no new adverse visual impact is expected after implementation of necessary landscaping requirements.
35. The Notice of Application and environmental review was referred to jurisdictional agencies, departments and adjacent property owners, within 1,000 feet excluding 60' public right-of-way, on March 22, 2022. Comments were due on April 5, 2022. Comments are addressed, as appropriate, within this decision and in the form of Conditions of Approval. The following agencies and departments were noticed:

Agencies Notified	Response Rec'd Date	Agencies Notified	Response Rec'd Date
Chelan County Public Works	3/30/2022	Chelan County PUD No 1	3/23/2022
Confederated Tribes of Colville	3/22/2022	Chelan County Building Official	None
Department of Fish and Wildlife	None	Lake Chelan Reclamation District	3/24/2022
Chelan Douglas Health District	None	Fire District #5	3/29/2022
Yakama Nation	None	Department of Archaeology	4/5/2022
Chelan County Fire Marshal	None	Manson Community Council	4/3/2022

36. A public comment was received from H. Sam Markham on April 5, 2022. He is not opposed to the proposed tasting room, but is concerned about the road width of Ivan Morse Road and the sight visibility when there is fruit on the vines.
37. The subject project is categorically exempt from environmental review pursuant to WAC 197-11-800.
38. Application and Public Hearing Notice Compliance:

Application Submitted:	February 14, 2022
Determination of Completeness issued:	March 11, 2022
Notice of Public Hearing:	May 21, 2022
Public Hearing:	June 1, 2022

39. The proposed development is for a winery tasting room exceeding 1,500 sq.ft. of retail space, which is not specifically addressed within the Chelan County Comprehensive Plan. However, the proposed development is located within Commercial Agricultural Lands (AC) designation states:

“Purpose: 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.

Uses appropriate for these areas include: agriculture; open space; residential; and forestry. Additional uses may be considered with supplemental provisions. These provisions shall address performance standards, impacts to the surrounding area, and be consistent with the goals and policies of the comprehensive plan. Such uses may include: natural resource support facilities and services; mineral resource activities; intensification of existing small scale recreational or tourist uses that rely upon a rural setting but that do not include a new residential component; intensification of development on lots containing existing isolated nonresidential uses; home occupations; bed and breakfasts; and community facilities.”

- 39.1 Hearing Examiner Finding: Goal LU23 of the Chelan County Comprehensive Plan states: Encourage the development and maintenance of recreational facilities and opportunities to meet the needs of residents and visitors. With the Goal Rationale being: Recreational opportunities help to promote the area for tourism and provide for a high quality of life. Wineries generally have associated agricultural land for the vineyard that produces the grapes for wine making. The intent of the proposed “winery tasting room greater than 1,500 sq.ft. of retail space” is to encourage agri-tourism, serving not only the residents of Chelan County, but visitors as a possible destination point. The subject property will maintain its rural characteristics. As proposed and conditioned, the application complies with the Goals and Policies identified in the Chelan County Comprehensive Plan.
- 39.2 Conclusion: The proposal is consistent with the Chelan County Comprehensive Plan.
40. Chelan County Code, Section 14.98.2005: Winery. Per code definition, “Winery” means a facility where fruit or other products are processed (i.e., crushed, blended, aged, and/or bottled) and may include as incidental and/or accessory to the principal use a tasting room, food and beverage service, places of public/private assembly, and/or retail sales area. Distilleries and breweries, for the purposes of placement in various zoning districts and regulation requirements, are synonymous with winery.
41. Chelan County Code, Section 11.30.010: Commercial Agricultural Lands (AC). The proposed development is located in the AC zoning district of Chelan County. According to Chelan County Code Section 11.04.020 District Use Chart, wineries with greater than 1,500 sq.ft. of retail space require a Conditional Use Permit.
42. Chelan County Code 11.30.020 Standards. All development in this zone shall meet the applicable provisions of the Chelan County Code, including without limitation the following:
- 42.1 Minimum lot size: ten acres, which measures to the centerline of adjoining public rights-of-way. Cluster subdivisions approved pursuant to Title 12 of the Chelan County Code may have reduced minimum lot sizes. Where a land division process would result in a fractional lot that is less than the required minimum but greater than fifty percent of the minimum area of the district, said lot may be allowed. Only one fractional lot per land use application may be created through this process.
- 42.2 Minimum lot width: one hundred fifty feet at the front building line.
- 42.3 Maximum building height: thirty-five feet except as provided for in Section 11.88.170.

- 42.4 Maximum Lot Coverage. Buildings and structures shall not occupy more than thirty-five percent of the lot area.
- 42.5 Minimum Setback Distances.
- 42.6 Setbacks from Agriculture.
 - 42.6.1 Hearing Examiner Finding: The proposed winery tasting room shall meet all dimensional standards in the AC zoning district.
 - 42.6.2 Conclusion: Setbacks would be reviewed at the time of building permit submittal.
- 42.7 Off-street parking requirements in this district shall be as follows:
 - 42.7.1 Two spaces per single-family dwelling
 - 42.7.2 Off-street parking and loading shall be provided as prescribed in Chapter 11.90 of this title.
 - 42.7.1.1 Conclusion: The required parking spaces are determined by Chelan County Code 11.90. Chelan County Code Section 11.90.030 requires that ADA parking with linked travel routes, illumination, stormwater, landscaping, design and materials for parking areas, including snow storage, wheel stops, distance to use, access lanes, backing movements or maneuvering and surface materials, are addressed. At the time of building permit submittal, the applicant shall provide Chelan County Public Works with a parking area, type of surface material proposed for the parking lot, number of parking spaces, and general parking schematic for the proposed project.
- 42.8 Landscape standards shall be provided as prescribed in Chapter 15.50 of Title 15, Development Standards, as amended.
 - 42.8.1 Hearing Examiner Finding: The proposed development is not exempt from the landscaping requirement because it is a new commercial development and the retail space of the tasting room would be greater than 1,500 sq.ft. Chelan County Code Section 15.50.060 requires landscaping for the internal parking areas.
 - 42.8.2 Conclusion: A landscaping plan pursuant to CCC 15.50.030 will be required at the time of building permit submittal.
- 42.9 All plats, short plats, development permits and building permits issued for development activities on, or within five hundred feet of, land designated as agricultural lands shall contain a notice that the subject property is within or near designated long-term commercial agricultural lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.
 - 42.9.1 Hearing Examiner Finding: The conditional use permit review recognizes potential conflicts between uses.
 - 42.9.2 Conclusion: The Hearing Examiner finds that there are no potential conflicts between uses. The proposed development consists of expanding the current use as a winery and the closest residence is over 500 feet away from the proposed winery tasting room.
- 42.10 Additional Public Notice Provisions. Upon receipt of an application for all plats, short plats, conditional use permits, variances and similar land use applications, the county shall provide notice of the application to adjacent property owners and all owners of

property located within one thousand feet of the proposed subdivision or development per the provisions of Section 14.08.050.

42.10.1 Hearing Examiner Finding: Notice was provided to properties within 1,000' of the subject boundary, excluding 60' of public right-of-way.

42.10.2 Conclusion: The additional noticing requirements have been met.

42.11 All applications related to the following types of land uses shall meet with the agricultural review committee (ARC) to review proposed projects, identify possible impacts, outline possible mitigation measures, and make a formal recommendation to Chelan County staff prior to rendering a decision on the application or setting a public hearing. ARC review and recommendation shall be based on the agricultural good neighbor practices adopted by the Chelan County board of county commissioners, Chapter 10.30. All recommendations are for the consideration and final determination of the decision-making body.

42.11.1 Hearing Examiner Finding: A past Community Development Administrator issued a determination on October 27, 2014 that no review was required due to the fact that the ARC group has not been fully established.

42.11.2 Conclusion: This section of code does not apply.

43. Chelan County Code, Conditional Use Permit Criteria 11.93.040: 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:

43.1 All criteria required for a specific use by this chapter can be satisfied.

43.1.1 The review for compliance is completed with this decision.

43.1.2 According to the submittal materials and subject to the recommended conditions of approval, all criteria required for the proposed development have been or can be satisfied.

43.2 A finding can be made that 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.

43.2.1 The site plan of record, date stamped February 14, 2022, demonstrates that the existing and proposed development would meet applicable development standards is CCC Section 11.30.020.

43.2.2 A geologic assessment, prepared by Don Phelps of Water Resources Engineering was submitted with the application, which concluded that the proposed action would not pose a risk to the subject property providing that the following three recommendations are implemented:

43.2.2.1 Do not exceed 1.5:1 on cut slopes or less than 2:1 on fill slopes.

43.2.2.2 Direct all surface runoff into the existing vineyards abutting the site location for infiltration.

43.2.2.3 Any fill material placed that will support structures shall be compacted to 95% of maximum density as measured by the Modified Proctor test, or other approved means.

- 43.2.2 Based on the site plan of record, the proposed development would meet applicable zoning and critical areas regulations.
- 43.3 Compatibility with the adjacent uses and the protection of the character of the surrounding area.
 - 43.3.1 The adjacent land uses include agricultural and residential lands. Impacts to surrounding properties may result from traffic, noise, and light. However, the winery has been in operation for several years and the proposed increased development will not significantly affect the current ambiance of the area.
 - 43.3.2 The Hearing Examiner finds that the character of the surrounding area would not be significantly impacted by the proposed development due to the current use of the subject property as a winery.
- 43.4 Detrimental impacts on the natural environment and productive use of surrounding natural resource lands can be mitigated or avoided.
 - 43.4.1 The proposed development is located within the agricultural designated resource lands. The project design includes elements that are complementary and compatible with agri-tourism.
- 43.5 No conditional use permit shall be issued without a written finding that:
 - 43.5.1 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.
 - 43.5.1.1 According to the application materials and the agency comments/review, adequate capacity exists to provide services for the proposal.
 - 43.5.2 No county facilities will be reduced below adopted levels of service as a result of the development.
 - 43.5.2.1 The subject property is accessed from Ivan Morse Road. Chelan County Public Works has reviewed the proposal and no reduction of the adopted levels of service has been identified.
 - 43.5.2.2 The proposed development is in compliance with the adopted levels of service.
- 43.6 The proposed use shall not result in undue adverse impacts affecting the public health, safety and welfare.
 - 43.6.1 Impacts to the surrounding properties and the public health, safety and welfare have been reviewed with this decision.
 - 43.6.2 The Hearing Examiner sets as a Condition of Approval that the proposed development will not result in undue adverse impacts to the public health, safety and welfare.

- 43.7 A finding shall be made that 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. Primitive or forest service roads may be considered appropriate access as provided in Section 11.88.070.
- 43.7.1 According to the application materials and the agency comments, the proposed development shall provide adequate provisions 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 Title 11 and Title 15 of the Chelan County Code subject to the Conditions of Approval.
- 43.8 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.
- 43.8.1 According to the application materials and the agency comments, 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 subject to the Conditions of Approval.
- 43.9 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.
- 43.9.1 According to the application materials and above review, the proposed development is consistent and compatible with the intent, goals and objectives and policies of the Comprehensive Plan, and any implementing regulation.
- 43.10 All conditions necessary to mitigate the impacts of the proposed use are conditions that are measurable and can be monitored and enforced.
- 43.10.1 Hearing Examiner Finding: The Hearing Examiner has included Conditions of Approval as necessary to ensure that all criteria are adequately addressed.
- 43.10.2 Conclusion: The Hearing Examiner's Conditions of Approval are measurable and can be monitored and enforced.
44. Chelan County Code Title 13: Stormwater. The proposed development is required to meet Chelan County Code Title 13, Stormwater.
45. Chelan County Code Title 15: Development Standards. Additional review will be required after submittal of the proposed internal driveway, fire protections, and parking lot landscaping standards are submitted. The proposed development is required to meet Chelan County Code Title 15, Development Standards, excepted as modified by this decision.

46. An open record public hearing after due legal notice was held using Zoom video conferencing on June 1, 2022.
47. Appearing and testifying on behalf of the Applicant was Todd Smith. Mr. Smith testified that he was the agent of the property owner and the Applicant and was authorized to testify at this hearing. Mr. Smith indicated that the Applicant agreed with all the provisions set forth within the staff report and all the Conditions of Approval with the exception of Condition of Approval No. 24. This proposed condition related to right-of-way dedication. Mr. Smith provided argument that right-of-way dedication was not required by the issuance of a Conditional Use Permit.
48. Also testifying for the Applicant was Don Phelps. Mr. Phelps testified that he was the Applicant and the property owner. He testified that there should not be the need for a right-of-way dedication until there was a need identified.
48. No member of the public testified at this hearing.
49. Staff indicated that they would defer to Public Works regarding the right-of-way dedication question. The Hearing Examiner left the record open until 5:00 p.m. June 1, 2022, for the Chelan County Public Works Department to comment on the need for a right-of-way. The Hearing Examiner indicated that the Hearing Examiner would keep the record open following Public Works comment, if requested by the Applicant.
50. Prior to 5:00 p.m. on June 1, 2022, the Hearing Examiner received and reviewed the following emails:
 - 50.1 June 1, 2022 10:06 a.m. email from Andrew Brunner.
 - 50.2 June 1, 2022 10:14 a.m. email from Alex White.
 - 50.3 June 1, 2022 11:33 a.m. email from Todd Smith.
 - 50.4 June 1, 2022 12:51 p.m. email from Don Phelps.
 - 50.5 June 1, 2022 1:08 p.m. email from Alex White.
 - 50.6 June 1, 2022 1:49 p.m. email from Andrew Brunner.
 - 50.7 June 1, 2022 4:47 p.m. email from Andrew Brunner.
 - 50.8 June 1, 2022 4:52 p.m. email from Don Phelps.
51. The record was closed at 5:00 p.m. June 1, 2022.
52. The Applicant did not request that the record be reopened for any purpose.
53. Based upon the final email from Andrew Brunner, the Hearing Examiner modified Condition of Approval No. 24, as set forth herein.
54. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision
55. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has authority to render this Decision.
2. The proposal is consistent with the Chelan County Comprehensive Plan.

3. The proposed use is permitted with an approved conditional use permit.
4. As conditioned, the proposed use would be compatible with the character of the surrounding area.
5. As conditioned, the use will not be detrimental to the natural environment.
6. As conditioned, the proposed development would not have an adverse impact on public health, safety and welfare.
7. Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed use.
8. As conditioned, all necessary facilities, improvements and services are consistent per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
9. 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.
10. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

III. 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 conditions of 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 CCC Section 11.93.040(10), this Conditional Use Permit shall be in conformance with the submitted application of record, including site plans date stamped February 14, 2022, or as amended by this decision.
3. Pursuant to Chelan County Code Chapter 11.93, the applicant is authorized to develop the subject property as a winery tasting room and storage area as identified on the site plan of record, dated February 14, 2022.
4. The applicant shall comply with all applicable local, state and federal regulations consistent with these conditions.
5. The applicant is responsible for securing any and all state and federal agency permits and licenses as may be required.
6. The project shall proceed in conformance with the application and site plan of record on file with the Chelan County Planning Department except as modified herein.
7. Pursuant to Chelan County Code Section 11.93.040(7), the applicant shall provide written verification, from the Chelan-Douglas Health District, of adequate year-round on-site septic facilities, prior to issuance of any occupancy permit.
8. 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 winery tasting room and case storage room. Change of use permits will be required for existing structures being converted to office space.

9. Pursuant to CCC 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 Chapter 15.50, the applicant shall submit a Landscaping Plan for approval, at the time of submittal of any Chelan County Building Permit.
11. All formal off-street parking facilities shall comply with Chelan County Code section 11.90.030.
12. Pursuant to CCC Section 11.93.030, a letter of compliance shall be submitted by the applicant to Chelan County Community Development prior to the commencement of the proposed use; this letter shall include the following:
 - 12.1 A parking and circulation plan approved by Chelan County Public Works pursuant to CCC Section 11.93.330(3).
13. All signage shall be approved and installed consistent with Chelan County Code 11.92; Signs.
14. Permitted activity shall be in conformance with all applicable local, state and federal regulations, statutes, rulings or requirements including, but not limited to the Chelan County Code Chapters 11.30 (Commercial Agricultural Lands), 11.93 (Conditional Uses) and section 11.93.320 (Winery with value-added operation retail component of nursery greater than 1,500 sq.ft.).
15. Pursuant to 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, and Chelan County Community Development.
16. Pursuant to Chelan County Code Section 11.93.070, in any case where a conditional use permit is granted under the terms of this title, no building or other permit shall be issued until after the end of the appeal period allowed in Title 14 of the Chelan County Code.
17. Pursuant to Chelan County Code Section 11.93.315(5), the applicant shall submit a compliance report to Community Development one year and five years after the date of this decision. The report shall include documentation regarding how each condition of approval is being meet.
 - 17.1 Chelan County Community Development will review the number of noise complaints, if any, to determine if the applicant shall be required to amend the type of noise (amplified or non-amplified), hours of operation or an increase buffering in order to reduce noise impacting the surrounding properties.
 - 17.2 Chelan County Community Development may require the applicant to provide a noise study as part of this review.
18. The applicant may be required to obtain Winery General Permit (Permit) coverage from the Department of Ecology (Ecology) if wine, juice and/or wastewater production volumes surpass those quantified in Special Condition S1, Table 3 of the Permit. Ecology may also require Permit coverage if a facility is determined to be a "Significant Contributor of Pollutants or a Significant Industrial User" as defined in Appendix B of the Permit.
19. Pursuant to Chelan County Code Chapter 11.04, only Food and Beverage Service will be allowed as part of the winery tasting room. Food and Beverage Service is defined in Chelan County Code Section 14.98.835 as "catered food, prepackage food for activities and uses that are accessory to wineries and other similar uses". Restaurants are not an allowed use in the AC zoning district.
20. 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.

21. Pursuant to Chelan County Code Section 11.93.100, a change in use, expansion or contraction of site area, or alteration of structures or uses which are classified as conditional and are existing prior to the effective date of Resolution 2000-129, codified in this title, shall conform to all regulations pertaining to conditional uses.
22. Pursuant to Chelan County Code Section 11.93.110, this conditional use permit shall become void after three (3) years after approval or such other time period as established by the Hearing Examiner if the use is not completely developed. Said extension shall not exceed a total of six years and said phases and timelines shall be clearly spelled out in the application.
23. Pursuant to Chelan County Code Section 11.93.120, this action of the Hearing Examiner is final unless appealed pursuant to the judicial appeal provisions of Title 14 of the Chelan County Code.

Chelan County Public Works

24. Pursuant to Chelan County Code Title 11.88.070(3); and Chapter 4, Sec. 6.14 of the Chelan County Transportation Element, the Applicant is required to dedicate additional right-of-way to make the right-of-way on Ivan Morse Road 30' from centerline, PROVIDED, that immediate right-of-way dedication can be delayed, if the Applicant and County can execute a mutually agreeable "No Protest Agreement," that, at a minimum, requires the Applicant or then current owner of the subject property, to dedicate, without cost to the County, the required land needed for a road improvement project. This Agreement shall further run with the land. The Applicant shall draft said Agreement and no building permits shall be issued until the County approves, signs and records the Agreement.
25. Pursuant to Chelan County Code Title 15.30, the applicant will be required to construct the Private Internal Access road to meet a Rural Emergency Vehicle Access Road (Standard Plan PW-22) with an Emergency Vehicle Turnaround (Standard Plan PW-23 A or B) within the proposed project.
26. The applicant will be required to show the dimensions and type of material proposed for the guest parking area on the CUP Site Plan for the proposed project. Prior to commencement of activities, the applicant shall provide Chelan County Public Works with a parking area, type of surface material proposed for the parking lot, number of parking spaces, and general parking schematic for the proposed project.
27. Pursuant to Title 15.30.340 the applicant will be required to construct the access approaches onto Ivan Morse Road to meet the County's Industrial/ Commercial Driveway Approach (Standard Plat PW-26). The applicant will be required to obtain a Chelan County Approach Permit prior to constructing the Commercial Driveway Approach. The approach apron will be required to be paved.
28. The applicant is required to submit construction plans and reports in accordance with Title 15. The plans must be submitted simultaneously under one Letter of Transmittal. The applicant will be required to have the Construction Plans approved by Chelan County Public Works Department prior to construction. The following are the minimum construction plan elements: Road Improvement Plan (including location of utilities); Erosion and Sedimentation Control Plan; Lot Access Plan; Signage and Painting Plan; Drainage Report and Plan.
29. A Pre-Construction Meeting with the owner/contractor and Chelan County Public Works Department will be required prior to commencement of construction.

30. The applicant will be required to submit signed As-built Construction Plans by the applicant's engineer prior to Chelan County Public Works issuing final approval.
31. Pursuant to Chelan County Code Title 12.08.020, the applicant will be required to demonstrate legal and perpetual access for the proposed Facility.
32. Pursuant to Chelan County Code Title 13.18.030(9) if a Drainage System is required, show any necessary easements in accordance with the approved drainage plan;
33. Pursuant to Chelan County Code Title 13.18, A Drainage Report & Plan will be required to be submitted to Chelan County Public Works if any new impervious surface of 5000 square feet is created and must be reviewed and approved. This shall be completed during the submittal of any building permits.
34. If a drainage system is required, or an existing drainage system is in place, this system shall be privately owned and maintained to its originally designed condition by all the property owners having a vested interest. A "Notice to Title" shall be filed with the Chelan County Auditor's office prior to the submittal of a Building Permit, stating:

"The area within this site plan contains a private storm drainage system designed to control runoff originating from this site. This site shall burden and benefit the parties' successors and assigns; that its contents are binding upon the parties' successors in interest and runs with the land. The Drainage Plan for this development was prepared by the engineering firm of _____, dated _____, a copy of which is on file with the Chelan County Public Works Department. It shall be the responsibility of the property owner(s) and/or their successors to thereafter maintain the storm drainage system to the originally designed condition. Chelan County personnel shall have the right of access to the property for purpose of inspection of the storm drainage system. If Chelan County personnel determine that the storm system maintenance is unsatisfactory, and the property owner has had due notice and opportunity to satisfactorily maintain the system, Chelan County personnel and equipment may enter the property to perform the necessary maintenance. Such maintenance shall be at the property owner's expense.

This private storm water drainage system was installed for the owner(s), who hereby agree to waive on behalf of itself and its successors in interest, any and all claims for damages against any governmental authority arising from the inspection, approval of, design of, and construction and/or maintenance of the drainage system.

Chelan County PUD

35. Pursuant to the comment letter received from the Chelan County PUD on March 23, 2022.
 - 35.1 Electrical service is available at the subject property.
 - 35.2 A Line Extension or Facility Modification may be necessary
 - 35.3 Easements will be required for all primary power sited on the parcel or secondary power that crosses one or more parcels to serve another parcel.
 - 35.4 Owner will need to apply for power with Chelan PUD.

IV. DECISION

Based upon the above noted Findings and Fact and Conclusions, Conditional Use CUP 2022-070 is hereby **APPROVED**.

Dated this 3rd day of June, 2022.

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.