

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW, CONDITIONS OF APPROVAL
CUP 2020-017	)	AND DECISION
Central Construction, Inc.	)	
	)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on September 21, 2022, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Conditions of Approval, and Decision as follows:

**I. FINDINGS OF FACT**

1. This is an application for a Conditional Use Permit requested by Dan Beardslee (agent) on behalf of Central Construction, INC (owner) for a mineral extraction (short term). The applicant does not propose any to add any additional structures to the development at this time.
2. The Applicants/Owners are Central Construction, Inc., PO Box 1920, Chelan, WA 98816. Their agent is Dan Beardslee, 325 32<sup>nd</sup> St., NW, E. Wenatchee, WA 98802.
3. The subject property is located at 23505 US HWY 97A, Chelan, WA.
4. The abbreviated legal description and parcel number of the subject property is: That portion of the Southwest quarter of the Southwest quarter of Section 8, Township 24N, Range 23, E.W.M. lying westerly of the right of way of state highway no. 10, Chelan County. Parcel No. 27-23-08-430-050. The lot size is 28 acres.
5. The subject property is not located within any Urban Growth Area.
6. The property is located within the Rural Residential/Resource 20 (RR20) comprehensive plan designation and zoning district.
7. The subject property currently has an existing maintenance building on it.
8. The subject property is very rocky with steep slopes.
9. The property to the north is zoned Rural Residential/Resource 20(RR20). It is an un-development property.
10. The property to the south is zoned Rural Residential/Resource 5 (RR5) within Chelan County jurisdiction and Warehousing and Industrial District (W-I) within City of Chelan Urban Growth Area (UGA) zoning districts. It is residential and US 97A.
11. The property to the east is Rural Residential/Resource 5 (RR5) zoning district and is residential property and US 97A.
12. The property to the west is zoned Rural Residential/Resource 20(RR20) and Warehousing and Industrial District (W-I) within City of Chelan Urban Growth Area (UGA) zoning districts and is industrial property.

13. The Applicant submitted an Aquifer Recharge Disclosure Form with application, dated October 14, 2020. The proposed project would not require a vulnerability report, pursuant to CCC Chapter 11.82, as the project is not located within a wellhead protection area. Therefore, a Vulnerability Rating Report would not be required with building permit application.
14. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property contains mule deer habitat. Therefore, the provisions of CCC Chapter 11.78, would apply.
15. According to the Natural Resources Stream Typing Maps, no streams are indicated on or adjacent to the subject property. Therefore, the provisions of CCC Chapter 11.78, would not apply.
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 development. A geological site assessment was submitted with the application.
17. Pursuant to the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, no wetlands are indicated on or adjacent to the subject property. Therefore, the provisions of CCC Chapter 11.80 Wetland Areas Overlay District would not apply.
18. Based on comments from WA Dept. of Archaeology & Historic Preservation, the subject property is located within an area of having a high potential for archaeological resources. 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. The applicant plans to begin construction of the proposed development upon receipt of all required permits.
20. The subject property fronts along US HWY 97A (a State Highway), which has a minimum of 60' right-of-way in the county road system. The point of access is to be reviewed and required to demonstrate or obtain a Washington State Transportation Approach Permit for the existing access onto US Hwy 97A.
21. Domestic water to the subject property is supplied by an existing single private well.
22. Chelan County PUD provides electrical services to the subject property.
23. Sanitation is supplied by a septic system.
24. Noise is similar to other public uses. The Applicant must comply with CCC, Chapter 7.35 Noise and RCW 70.107. No blasting is proposed. However, there will be unavoidable noise from the extraction, crushing, and trucking operations.
25. The proposed short-term mineral extraction operation is to be setback off of the right of way and is not anticipated to create a visual impact to surrounding properties. As conditioned, the visual impact is anticipated to be minimal.
26. The applicant submitted an environmental checklist with application on October 14, 2020. Pursuant to WAC 197-11 process and RCW 43-21C of the State Environmental Policy Act (SEPA), an environmental review and a threshold determination was completed, and a Mitigated Determination of Non-significance (MDNS) was issued on September 21, 2021. The SEPA Checklist and ODNS are included within the file of record and adopted by reference. The MDNS was not appealed.

27. 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 21, 2020 with comments due December 5, 2020.
28. Agency comments are considered in the decision and, when appropriate, associated Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received

Agencies Notified	Response Date	Nature of Comment
Chelan County Fire Marshal	No Comment	
Chelan County Building Official	No Comments	
Chelan-Douglas Health District	December 8, 2020	No objections to project approval so long as the project.
Chelan County Public Works	December 2, 2020	Applicant will be required to comply with stormwater and driveway requirements.
Chelan County PUD	November 25, 2020	Currently has a power pole serving the existing building on the subject property.
Chelan County Fire District No.7	No Comment	
Lake Chelan School District	No Comment	
WA Dept. of Archaeology and Historic Preservation	No Comment	
Yakama Nation	No Comment	
Confederated Tribes of Colville	November 22, 2020	Unaware of any archaeological sites or traditional places on the parcels.
WA Dept. of Ecology	December 3, 2020	The installation and operation of a new or modified air pollutant source requires a preconstruction air quality permit and the proponent must apply for site permit coverage under the Sand and Gravel General Permit from Ecology prior to beginning site development.
WDFW	December 16, 2020	Request an annual survey by a qualified biologist to monitor and confirm that the development would maintain a 300 m or greater buffer zone from any Golden Eagle nests.
WSDOT	July 14, 2021	Request a site and circulation plan, demonstrate compliant with access connection's design

29. Public comments were received from the following:

- 29.1 Tom and Paula Kunkel;
  - 29.2 Loren Stocker;
  - 29.3 Jill Milner;
  - 29.4 Hans Hirshberger;
  - 29.5 Donna Wey;
  - 29.6 Nancy Balomey;
  - 29.7 Rich Quarre;
  - 29.8 Phil Long;
  - 29.9 Mary Murphy;
  - 29.10 Ken & Lori Jenkins;
  - 29.11 Mrs. Al Winkel;
  - 29.12 Gordon Tagge;
  - 29.13 Brent Krumm;
  - 29.14 Bret Henry;
  - 29.15 George Rohrich;
  - 29.16 Brian Patterson;
  - 29.17 Lori Valencia;
  - 29.18 Brent Morrison;
  - 29.19 Michael Walsh;
  - 29.20 Dirk Kayser;
  - 29.21 Cheyenne Stocker;
  - 29.22 Mary Sherer;
  - 29.23 Barbara Polley;
  - 29.24 Lesley Van Over;
  - 29.25 Carol Jenkins;
  - 29.26 Rod Cool;
  - 29.27 Janet Liberty;
  - 29.28 Barbara Schultz Sterner and Gary Sterner;
  - 29.29 Dirk Kayser;
  - 29.30 Lynn Cockrum;
  - 29.31 Barry Leahy;
  - 29.32 Donald Lloyd;
  - 29.33 Don Elsing;
  - 29.34 Lisa Garvich;
  - 29.35 Tiffany Gering;
  - 29.36 Randy Brooks;
  - 29.37 Sandy Sund;
  - 29.38 Jo Moore.
- 30. The application was submitted on October 14, 2020.
  - 31. The Determination of Completeness was issued on November 18, 2020.
  - 32. The Notice of Application was provided on November 21, 2020.
  - 33. The Notice of Public Hearing was provided on September 8, 2022.
  - 34. Chelan County Comprehensive Plan - Purpose: to allow for low intensity rural development, agricultural and forestry uses which do not require the extension of services or infrastructure. These areas provide greater opportunities for protecting sensitive environmental areas and creating open space typical of a rural setting. Uses appropriate for these areas include: open space, residential, agriculture, 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 resources support facilities and services; mineral resource activities; intensification of existing small scale recreational or tourist uses that rely on a rural location or 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.

35. Chelan County Code - Chelan County Code (CCC), Section 11.040.020, District Use Chart:
  - 35.1 Mineral extraction, short term is permitted with an approved Conditional Use Permit (CUP) in the RR20 zoning district.
  - 35.2 Mineral extraction, short term is defined in CCC Section 14.98.1220 as ‘any activity which utilizes the extraction, processing, and sale of commercial and noncommercial mineral resources. ‘Short term’ means a duration of six years or less.
36. 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.
  - 36.1 All criteria required for a specific use by this chapter can be satisfied.
    - 36.1.1 Criteria for a mineral extraction, short term has been addressed below.
    - 36.1.2 Based on review of the application materials submitted, the criteria for a mineral extraction, short term can be satisfied.
  - 36.2 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.
    - 36.2.1 The site plan of record, date stamped October 14, 2020, demonstrates the proposed development would meet applicable zoning setbacks identified CCC Section 11.08.020.
    - 36.2.2 Based on the site plans of record, date stamped October 14, 2020, the proposed development would meet the applicable zoning and critical areas regulations.
  - 36.3. Compatibility with the adjacent uses and the protection of the character of the surrounding area.
    - 36.3.1 As proposed, the gravel pit meets the definition of Short-Term Mineral Extraction as defined in CCC Section 14.98.1220.
    - 36.3.2 The proposed development is located in a rural area outside of the City of Chelan, although there is some residential development across US 97A.
    - 36.3.3 As conditioned, the proposed development would not be incompatible with the surrounding uses or character.
    - 36.3.4 The project is of a limited duration. Dust and noise are subject to Department of Ecology regulations. The site had previously been used for a business that involved trucking operations. While there will be impacts to neighboring properties, these impacts are adequately mitigated through the MDNS and the Conditions of Approval set forth herein.
  - 36.4. Detrimental impacts on the natural environment and productive use of surrounding natural resource lands can be mitigated or avoided.

- 36.4.1 The subject property is not identified as a classified resource land nor is it located within a protected critical area.
- 36.4.2 As conditioned, the proposed development would not be detrimental to the natural environment.
- 36.5. No conditional use permit shall be issued without a written finding that: 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.
  - 36.5.1 Chelan County provided a Notice of Application to all providers; received comments are included in the file of record.
  - 36.5.2 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development.
- 36.6. No county facilities will be reduced below adopted levels of service as a result of the development.
  - 36.6.1 The proposed development is not anticipated to result in county facilities being reduced as a result.
  - 36.6.2 As conditioned, the proposed development would not result in county facilities reduced below adopted levels of service.
  - 36.6.3 The proposed use shall not result in undue adverse impacts affecting the public health, safety and welfare.
  - 36.6.4 As conditioned, the proposed development would not have an adverse impact on public health, safety and welfare.
- 36.7. 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.
  - 36.7.1 Finding of Fact:
    - 36.7.1.1 Roads, ingress and egress: The subject property is located on a WSDOT right of way; access is to be reviewed by WSDOT.
    - 36.7.1.2 Stormwater: The applicant shall comply with CCC Title 13; Chelan County Stormwater Guidelines and Procedure.
    - 36.7.1.3 Domestic and Irrigation Water: The proposal is a single use well.
    - 36.7.1.4 Sanitary Facilities: The proposal does not require sanitary systems.
    - 36.7.1.5 Power: Power is provided by Chelan County PUD.
    - 36.7.1.6 Fire Protection: Fire protection is provided by Chelan County Fire District No. 7.
  - 36.7.2 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.

- 36.8 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.
- 36.8.1 Finding of Fact:
- 36.8.1.1 Noise and Vibration: Noise and vibration would be temporary during construction of the improvements. Construction noise is regulated by CCC Section 11.88.190 and CCC Chapter 7.35. Extraction, crushing, and trucking activities will create noise.
  - 36.8.1.2 Light and Glare: Light and glare is regulated by CCC Section 11.88.080.
  - 36.8.1.3 Heat, Steam, Odors, Smoke and Dust: The proposed development would not generate heat, steam or odors. Dust impacts will be adequately mitigated.
  - 36.8.1.4 Erosion: The subject property is located within a geologically hazardous area for erosive soils; a geological assessment was submitted with application.
  - 36.8.1.5 Water Quality: As conditioned, the proposed development would have to meet standards as required by Chelan-Douglas Health District.
  - 36.8.1.6 Wastes and Physical Hazards: No hazards were identified.
  - 36.8.1.7 Electrical Disturbance: The proposal would not result in electrical disturbances.
  - 36.8.1.8 The Applicant will comply with all rules, regulations and WAC provisions, including all Department of Ecology regulations related to maximum noise limits, dust control, air quality, odors and water quality.
- 36.8.2 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.
- 36.9 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.
- 36.9.1 The proposed short-term mineral extraction would be consistent with the goals and policies of the Chelan County Comprehensive Plan and Chelan County Code.
  - 36.9.2 As conditioned, the project is consistent with the Chelan County Comprehensive Plan and Chelan County Code.
37. Chelan County Code, Section 11.93.240/250, Mineral extraction, short-term. The following minimum conditions shall apply to short-term mineral extraction:
- 37.1 Performance Standards.
- 37.1.1 All excavation operation and trucking directly related such operations may be permitted only between the hours of six a.m. and five-thirty p.m., Monday

through Saturday, unless the hearing examiner determines at a hearing that no nuisance exists, or that unusual circumstances are present, in which case the relaxation of this regulation shall terminate when such conditions and circumstances are deemed by the hearing examiner to no longer exist.

- 37.1.2 As conditioned, the applicant would comply with the hours of operation.
- 37.2 If property to be utilized has an exterior boundary line which shares a common property line with residential property or resource zoning districts, or if in the judgment of the hearing examiner, the nature and location of the operation is such as to constitute a hazard to public safety, then a solid wall or fence no less than five feet in height shall be installed and maintained no closer than fifty feet from the excavated area. Locked gates shall bar all openings in the fence when the permittee or his agents are not on premises.
  - 37.2.1 The subject property is within and is surrounded by a Rural Residential/Resource zoning district. Across US 97A there is residential development which may be conflict of uses.
  - 37.2.2 If necessary a solid wall or fence may be required for the intention of screening from conflicting uses
- 37.3 The area shall be posted with signs having letters at least three inches high and two inches wide, giving clear warning of the dangerous conditions resulting from the excavation. Said signs shall be no farther than one hundred feet apart around the periphery of the subject property and shall be maintained in good repair until excavation and reclamation operations are completed:
  - 37.3.1 The subject property would have signs posted giving clear warning of the dangerous conditions resulting from the excavation.
  - 37.3.2 As conditioned, the applicant would comply with the posting requirements.
- 37.4 Operators shall divert or protect all natural drainage courses to prevent pollution or reduction of natural flow, shall impound runoff as necessary to hold runoff to levels existing prior to the introduction of excavation operations, shall protect streams and grounds from acid-forming or toxic materials exposed or produced by excavation operations, shall seal off to the extent directed by the hearing examiner any breakthrough of acid water creating a hazard, shall not allow water to collect or permit stagnant water to remain in excavations. Wherever possible, the operator shall refrain from disturbing natural drainage course, stream, rivers and lakes.
  - 37.4.1 The subject property does not contain any streams.
  - 37.4.2 This provision would not apply.
- 37.5 Blasting or other activities producing ground vibrations shall not constitute a nuisance to, or damage in any way, the property adjacent landowners. The hearing examiner may require testimony by technical specialists in order to determine appropriate amounts and placement of explosives and other vibration-producing equipment, and may place such restrictions as are appropriate to resolve the problem.
  - 37.5.1 The application indicates there will be no blasting.
  - 37.5.2 As conditioned, the development would need to meet WAC 296-52 if blasting is later approved.

- 37.6 Maximum permissible noise levels shall be according to the provisions of Chapter 173-60 WAC, Maximum Environmental Noise Levels.
- 37.6.1 The development would limit noise levels pursuant to this section.
- 37.6.2 The Hearing Examiner sets as a condition that noise be reviewed as part of the compliance review.
- 37.7 Excavation operations shall be permitted no closer than one hundred feet from any property line, street road or highway. In no case shall mining operations impair lateral support or cause earth movements or erosion to extend beyond the exterior boundary lines of property being excavated. Structures or buildings shall not be located closer than fifty feet from a developed residential property line. The office building shall maintain a twenty-five-foot setback.
- 37.7.1 The proposed development would conduct all exaction operations no closer than one hundred feet from any property line.
- 37.7.2 As conditioned, this provision would be met.
- 37.8 Underground excavation operations shall not be left in a condition so as to be or become hazardous. Mine shafts, air courses, inclines, or horizontal working temporarily unused or deserted shall be blocked by solid bulkheads constructed of concrete, wood or steel. A locked manway or door may be installed as part of the bulkhead. Where shafts, air courses, inclines or horizontal working are to be permanently abandoned in accordance with good mining practice, the collar portal to such workings shall be completely blocked by permanent bulkheads constructed of concrete and/or steel or by causing the collapse of solid rock at such collar or partial in such manner as to prohibit the reopening of said workings by natural movement of the collapsed rock by gravity down inclined workings.
- 37.8.1 The development does not plan on any underground excavations.
- 37.8.2 This provision would not apply.
- 37.9 Vertical Limitations/Aquifer Protection:
- 37.9.1 Surface mining shall be limited to only one aquifer unless approved by the Washington State Department of Ecology. Hydrological barriers separating aquifers shall not otherwise be disturbed.
- 37.9.2 Activities related to mineral extraction and processing operations in the vicinity of aquifers must provide safeguards including containment to prevent direct contamination to the open aquifers and indirect contamination through infiltration on mining operation pollutants.
- 37.9.3 Imported material shall not be used as a backfill for mine sites where an aquifer has been breached.
- 37.9.4 Disturbed aquifers shall be reclaimed as ponds, lakes or wetlands.
- 37.9.5 Additional buffers may be required if necessary to prevent over-excavation when mining on an aquifer.
- 37.9.6 All relevant provisions of Chapters 11.80, 11.82 and 11.86 are to be met.
- 37.9.7 Based on the submitted geologic assessment there doesn't seem to be any impacts that would be associated with/to an aquifer.
- 37.9.8 This provision would not apply.

- 37.10 Such topsoil as exists on this site shall be retained on the site in sufficient quantities to ensure an adequate supply for reclamation purposes.
- 37.10.1 Currently there is not top soil on the subject property. Reclamation would rely on imported top soil.
- 37.10.2 As conditioned, reclamation would rely on imported top soil.
- 37.11 One copy of approved excavation and reclamation plans and specifications shall be kept on-site at all times during the progress of the excavation operation.
- 37.11.1 A copy of the excavation and reclamation plan would need to be kept on the subject property.
- 37.11.2 As conditioned, the excavation and reclamation plan shall be kept on the subject property.
- 37.12 Additional conditions may be required to address the following specific objectives:
- 37.12.1 The height and location of all equipment installed on the site, above and beyond the setback restrictions of this chapter, if unusual circumstances bearing on public safety or other vital concerns are deemed to exist.
- 37.12.2 The number and locations of points of ingress to and egress from any mining operations are subject to regulation by the hearing body.
- 37.12.3 Wherever possible, the operator shall schedule his excavation sequence in such a manner as to provide either natural or reclaimed buffers between the operation and adjoining properties.
- 37.12.4 Lighting may be regulated by the hearing body to minimize visibility from adjacent property and preclude it from shining directly onto adjoining property.
- 37.12.5 Stockpiles and tailings shall not exceed the height, slope and moisture content limits determined by the hearing body, not shall such stockpiles or tailings be located as to threaten adjacent slopes or properties. In making this determination, the hearing body may consult with the Washington State Department of Transportation, the Department of Natural Resources, the director of public works, or other authoritative sources.
- 37.12.6 The applicant expects no special provisions that would require anything above and beyond the setback restrictions as well as public safety. Currently only one access point is proposed for the development.
- 37.12.7 As conditioned, the development would need to comply with the provisions of this section.
- 37.13 Application Materials. In addition to the application and procedural requirements of Title 14, Development Permit Procedures and Administration, the applicant shall submit the following materials:
- 37.13.1 A copy of the reclamation plan being submitted to the appropriate state regulatory agency in application for a state permit and , when available, an approved copy of the final plan, and in those cases where such a plan is not required by the state, a special reclamation plan acceptable too the hearing examiner which shall consider the following: compatibility with existing neighboring land uses, present land use of the site, transportation systems, utility extensions, the physical character of the

site and the surrounding landscape, zoning patterns and the comprehensive plan;

37.13.1.1 Please see above.

37.13.2 The estimated quantities of all materials to be extracted;

37.13.2.1 One million cubic yards over six years.

37.13.3 A legal description of the site;

37.13.3.1 SW ¼ SE ¼ Section 8, Township 27N, Range 23, EWM.

37.13.4 An on-site study to determine appropriate mitigation requirements for noise, vibration, and dust levels. The study should specify what levels the applicant deems satisfactory to mitigate off-site disturbances;

37.13.5 An operation proposal detailing estimated frequency of blasting, estimated truckloads per day, what provisions for screening and fencing are proposed and estimated hours of operation;

37.13.5.1 There applicant doesn't anticipate any blasting associated with this development.

37.13.6 Proposed hauling routes to and from the site;

37.13.6.1 No proposed hauling routes have been submitted with this application.

37.13.7 A completed environmental checklist;

37.13.7.1 A SEPA checklist was submitted and a mitigated determination of non-significance was issued.

37.13.8 A map at suitable scale identifying the following on the proposed site.

37.13.8.1 This provision has been met.

37.13.9 Reclamation. Reclamation of surface mining sites shall be in accordance with the requirements of the State Department of Natural Resources. Reclamation activities shall not allow landfilling unless sites comply with Chapter 173-351 WAC, and other relevant state and federal regulations. If the operation is not subject to the State Department of Natural Resources permitting requirements.

37.13.9.1 The applicant has submitted a Washington State Department of Natural Resources Reclamation Permit and Plan.

37.13.9.2 This provision has been met.

38. An open record public hearing after due legal notice was held using Zoom video conferencing on September 21, 2022.

39. Appearing and testifying was Dan Beardslee and Will Poppie. Mr. Beardslee testified that he is an agent of the Applicant and property owner and was authorized to appear on their behalf. He testified that all of the proposed Conditions of Approval were acceptable, and that he had reviewed the revised staff report and had no objections to any of the representations contained therein. He indicated that all of the Conditions of Approval set forth within the Mitigated Determination of Non-Significance and the proposed Conditions of Approval for the Conditional Use Permit were acceptable to the Applicant.

He stated that a traffic study and Geotech analysis had been performed and that noise and dust were highly regulated by the Department of Ecology. He indicated that this is not a classic gravel "pit", but instead is a talus slope hill side. He indicated that the Applicant must still get a surface lining permit and that the proposal is to mine one million cubic yards of gravel over the six year term of this permit.

40. Appearing and testifying on behalf of the public were the following individuals:
  - 40.1 Randall Brooks. Mr. Brooks provided testimony and evidence in opposition to the project. It was his opinion that there is no way to mitigate noise, dust and light. He presented testimony that he is a traffic accident expert and that the location of this site has a potential for serious accidents. He testified about the wildlife on site and in the area.
  - 40.2 Kim Jenkins. Mr. Jenkins lives below the proposed site. He indicated that he can hear noise of people talking above his property. He stated he can hear the excavation equipment for the new house being built above them while they are inside of his house. His concerns related to noise, dust, and traffic safety concerns.
  - 40.3 Lori Jenkins. Ms. Jenkins agreed with the testimony of her husband. She stated that they can hear hammering from the house being built from inside their home. She testified that noise will be a huge impact, as well as dust.
  - 40.4 Tom Kunkel. Mr. Kunkel has lived in the area for more than 25 years. He indicated that there is too much truck traffic and there should be turn lane required. He also testified that the proposed hours of operation were too long.
  - 40.5 Ron Bauer. Mr. Bauer is in support of the project. He indicated that if the legal requirements for the permit can be met, then the project should be granted.
  - 40.6 Mike Buckingham. Mr. Buckingham testified that he is a dump truck driver and that he is in support of a new pit.
41. For rebuttal, Mr. Beardslee testified that they already have a Traffic Impact Study and will work with the Department of Transportation regarding traffic issues. He indicated that gravel operations are noisy and dusty, but there are regulations from the Department of Ecology and Chelan County that must be met.
42. Also testifying in rebuttal was Will Poppie. Mr. Poppie is the owner of the property and the Applicant. He indicated that he respects neighbor's residential uses. He stated that the gravel mined on this site will alleviate supply chain problems. He indicated that he is building his own house and will be closest resident to the site.
43. At the conclusion of the hearing, the Hearing Examiner kept the record open to allow members of the public who did not testify at the hearing to provide public comment. Additional public comments were received from Jason Markem, John Walcker, Laura Berube, Norm Pennington, Rachel Aldridge, Roberta Griffin, and T. Taylor Electric. All of these comments were admitted into the record. All of these comments were in favor of the project.
44. An additional public comment was submitted by Randy Brooks. This email is not admitted into the record. The Hearing Examiner left the record open ONLY for those members of the public who were not able to testify due to technical or unavailability reasons. The record was not left open for members of the public to submit rebuttal comments. Mr. Brooks' submission contained rebuttal testimony and therefore, was not

compliant with the Hearing Examiner's ruling. Again, Mr. Brooks' email from September 21, 2022 is not made a part of this record.

45. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
46. 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 proposed application as conditioned complies with the Revised Code of Washington.
3. The proposed application as conditioned complies with the Washington Administrative Code.
4. The proposed application as conditioned complies with the Chelan County Comprehensive Plan.
5. The proposed application as conditioned complies with the Chelan County Code.
6. 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 CCC 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 CCC 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 filling of an application for substantially the same matter within one year from the date of the final denial of the application.
3. Pursuant to CCC Section 11.93.240(1)(A), all excavation operation and trucking related to the operation is only permitted only between the hours of six am and five-thirty pm, Monday through Saturday.
4. Pursuant to CCC Section 11.93.240(1)(C), the subject property shall be posted with signs giving clear warning of the dangerous conditions resulting from the exaction.
5. Pursuant to CCC Section 11.93.240(1)(F), if blasting does occur it shall not constitute a nuisance or damage the adjacent property owners.
6. Pursuant to CCC Section 11.93.240(1)(G), the noise levels shall be in accordance with the provisions of Chapter 173-60 WAC.
7. Pursuant to CCC Section 11.93.240(1)(H), all excavation operation shall be no closer than one hundred feet from any property line, street, road or highway.
8. Pursuant to CCC Section 11.93.240(1)(K), topsoil shall be retained on the subject site to ensure an adequate supply for reclamation.
9. Pursuant to CCC Section 11.93.240(1)(L), one copy of the approved exaction and reclamation plans and specifications shall be kept on site.

10. Pursuant to RCW 27.53.060, if the applicant or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this permit, the applicant/ agent must 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.
  - 10.1 An inadvertent discovery plan must be submitted with the building permit application and kept onsite during all land disturbing activities.
11. Pursuant to RCW 27.53.060, on the private and public lands of Washington state it is unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly remove, alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, or remove any archaeological object from such site, without having obtain a written permit from the DAHP for such activities. In the event that prehistoric artifacts (i.e., arrowheads, spear points, mortars, pestles, other ground stone tools, fire pits, peeled trees, etc.) or historic-period artifacts or features (i.e., fragments of old plates or ceramic vessels, weathered glass, dumps of old cans, cabins, root cellars, etc.) are found during project implementation, the proponent or authorized agent shall cease work immediately within 200 ft of the find. Then they shall contact the Washington State DAHP to report the finding.
12. Activities that have the potential to disturb cultural resources outside the specified project area should not proceed prior to cultural resources review of potential adverse effects in the new area.
13. Pursuant to the requirements of the Department of Ecology:
  - 13.1. The applicant shall apply for a site permit coverage under the Sand and Gravel General Permit from Department of Ecology prior to beginning site development.
14. Pursuant to the requirements of the Chelan County Public Works Department:
  - 14.1. The applicant is required to demonstrate or obtain a Washington State Transportation Approach Permit for the existing access onto US Hwy 97A and approving access for this proposed project.
  - 14.2. The applicant's proposed Landscaping Plan would be required not to obstruct site distance at the proposed access point(s).
  - 14.3. A Drainage Report and Plan would be required if any new impervious surface of 5,000 sq ft is created and must be reviewed and approved prior to this Conditional Use Permit. If an existing Drainage System is in place, then the applicants engineer would need to demonstrate that the current Drainage System would accommodate this project.
  - 14.4. A private stormwater drainage system may be required for the proposed site. Operation and maintenance of the private drainage system would require a Maintenance Agreement. The Maintenance Agreement must include an operational and maintenance component. Said Maintenance Agreement shall be submitted to the Public Works Department for approval and recorded prior to the Conditional Use Permit approval.
15. Pursuant to WSDOT requirements the applicant shall:
  - 15.1. Provide a detailed site and circulation plan showing, at a minimum, the location of all structures and driveways; location of mining/extraction operations on the property; location and capacity on-site truck staging; and the approach angle, grade, and turning radii for the proposed access connection to US 97A.
  - 15.2. Demonstrate, to WSDOT's satisfaction, that the proposed access connection's design parameters within and adjacent to WSDOT R/W are compliant with the WSDOT Design Manual for the appropriate design vehicle.

- 15.3. Document, through field measurements, horizontal and vertical sight distance on US 97A for the current and proposed access connections.
- 15.4. Demonstrate, to WSDOT's satisfaction, that sight distance requirements are met for the proposed access connection based on posted, regulatory speed limits. If existing sight distance is insufficient, determine all off-site improvements that are needed to provide adequate sight distance for the proposed access connection.
- 15.5. Describe, to WSDOT's satisfaction, measures that will be taken to prevent stormwater discharge onto WSDOT R/W.
- 15.6. Document the likely operation days and hours for the proposed mining/extraction and truck movements to/from the site.
- 15.7. Document the expected heavy truck and passenger vehicle trip generation and distribution during the weekday PM peak-hour (if any weekend operations are expected). Analyze both average conditions over the expected duration of mining/extraction activities, and the peak-month within a year.
- 15.8. Document the total equivalent single axle loads over the duration of mining/extraction operations on US 97S both north and south of the parcel's proposed access point.
- 15.9. Demonstrate, to WSDOT's satisfaction, that the proposed land usage would not create an adverse impact to traffic operations or safety on US 97A, or to pedestrian or bicycle travelers along/across US 97A. This analysis must use recently-collected vehicle, pedestrian, and bicycle counts, and analyze conditions for the peak month of mining/extraction activities. Identify all on-site and/or off-site mitigations needed to resolve potential adverse impacts.
- 15.10. Assess turn land warrants for the parcel's proposed access at US 97A.
- 15.11. Obtain a valid access connection permit and construct the access, including all WSDOT-required mitigations.
16. The applicant shall provide any necessary line extensions and any associated easements pursuant to the standards of Chelan County PUD No. 1.
17. The Applicant shall comply with all noise standards set forth in WAC 173-60.

#### IV. DECISION

Based upon the above noted Findings and Fact and Conclusions, CUP 2020-017 is hereby **APPROVED**.

Dated this 27<sup>th</sup> day of September, 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.