

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW, CONDITIONS OF APPROVAL
CUP 2022-210)	AND DECISION
Wheeler Ridge, LLC.)	
)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on October 5, 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. An application for a Conditional Use Permit has been requested for a short-term mineral extraction site. The application proposes to develop and operate a less than two-acre short-term mineral extraction site in coordination with the establishment of a three-unit orchard complex on the subject property. Re-alignment to existing Upper Wheeler Road, as well as the development of orchard access roads require the use of base rock and gravel which would be extracted from the subject site.
2. The Applicants/Owners are Wheeler Ridge LLC, 4597 Stemilt Hill Road, Wenatchee, WA 98801. Their agent is Anne Hessburg – Grette Associate LLC.
3. The subject property is located at 2366 Upper Wheeler Road, Wenatchee, WA 98801.
4. The abbreviated legal description and parcel number of the subject property is: Section 17, Township 21 North, Range 20 E.W.M, Chelan County. The lot size is 640 acres. Parcel No. 27-21-20-17-000-000.
5. The subject property is not located within any Urban Growth Area (UGA).
6. The property is located within the Rural Residential/Resource 20 (RR20) comprehensive plan designation and zoning district.
7. The subject property currently is vacant.
8. The development is generally forested with an open meadow.
9. The property to the north is zoned Rural Residential/Resource 20(RR20).
10. The property to the south and east is zoned Forest Commercial (FC).
11. The property to the west is zoned Rural Public Lands (RP).
13. The applicant submitted an Aquifer Recharge Disclosure Form with application, dated May 10, 2022; the proposed development does not require a vulnerability report, pursuant to Chelan County Code (CCC), Chapter 11.82.
14. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property contains Northern Spotted Owl and Elk habitat; therefore, the provisions of CCC Chapter 11.78, would apply.

15. According to the Natural Resources Stream Typing Maps, there are (2) streams indicated on or adjacent to the subject property. Therefore, the provisions of CCC Chapter 11.78, would 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, there are wetlands are indicated on or adjacent to the subject property; therefore, the provisions of CCC Chapter 11.80 Wetland Areas Overlay District would apply.
18. Pursuant to Revised Code of Washington (RCW) 27.53.020, if cultural resources are found, the applicant would 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 would be accessed via Upper Wheeler Road (an unmaintained Primitive County Road). 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 is not applicable to this project.
22. Chelan County PUD provides electrical services to the subject property.
23. Sanitation is not applicable to this project.
24. Noise is similar to other public uses. The Applicant must comply with CCC, Chapter 7.35 Noise.
25. As conditioned, the visual impact is anticipated to be minimal.
26. A Mitigated Determination of Nonsignificance (MDNS) was issued on December 30, 2020 by Chelan County Community Development.
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 June 14, 2022 with comments due June 28, 2022. Agency comments are considered in this decision and, when appropriate, set forth as Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received.
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	No Comment	
Chelan County Public Works	June 28, 2022	Applicant would be required to comply with stormwater and

Agencies Notified	Response Date	Nature of Comment
		construction plans shall be required for approval of the County Engineer.
Chelan County PUD	No Comment	
Chelan County Fire District No.1	No Comment	
WA Dept. of Archaeology and Historic Preservation	No Comment	
Yakama Nation	No Comment	
Confederated Tribes of Colville	July 11, 2022	Unaware of any archaeological sites or traditional places on the parcels.
WA Dept. of Ecology	June 24, 2022	A sand and gravel general permit is required.
WDFW	June 28, 2022	Requests that Chelan County ensures that the mitigation measures included in the MDNS are applied to this CUP.
WA State Department of Natural Resources	June 23, 2022	Rock pits on forested lands are to adhere to resource protection as noted in WAC 222-24-060.

29. No public comments were received.
30. The application was submitted on May 10, 2022.
31. The Determination of Completeness was issued on June 8, 2022.
32. The Notice of Application was provided on June 14, 2022.
33. The Notice of Public Hearing was provided on September 24, 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 proposed development would meet all the design standards associated with the RR20 zoning district. The subject property is 640 acres in size. All critical area regulations have been addressed through the SEPA process, the approved Final MDNS (issued December 30, 2020), as well as the Critical Area Report, Habitat Management and Mitigation Plan (May 2021).
- 36.2.2 Based on the application materials and the previously approved permit, 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 The area is historical working forest and would not affect current land uses on nearby or adjacent properties. Adjacent properties include other orchard development, forested lands, residential, Squilchuck State Park, and public and private lands zoned as Commercial Forest Lands.
- 36.3.2 As conditioned, the proposed development would not be incompatible with the surrounding uses or character.
- 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 development would be conducted in accordance with the Final MDNS and the Final HMMP, both of which thoroughly address potential impacts to the natural environment and the productive use of the surrounding resource lands.
- 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 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 would not require surface water withdrawals or diversions. The orchards would be irrigated with existing water rights from the Lower Stemilt Irrigation District (LSID).
 - 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.
 - 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.
 - 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.
 - 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.
 - 36.8.2 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 development is consistent and compatible with the intent, goals, objectives and policies of the Comprehensive Plan and CCC. The development is specifically consistent with Chapter 4, of the Resource Element, of the Comprehensive Plan. The development is also consistent with CCC specific to the mineral extraction.
 - 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 relaxation of this regulation shall terminate when such conditions and circumstances are deemed by the hearing examiner to no longer exist.
 - 37.1.2 Pursuant to the Final MDNS, mineral extraction activities would occur during the hours of 7:00 am to 5:30 pm, Monday – Saturday.
 - 37.1.3 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 mineral extraction site would not have an exterior boundary line which shares a common property line with residential property or resource zoning districts. The proposed property would be a minimum of 600 ft from the north property line that is shared with residentially zoned forest land.
 - 37.2.2 Based on the application materials, the applicant has met this code requirement.

- 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 signage along the adjacent trail shall be provided to alert trail users during periods of mineral extraction. Additional signage around the perimeter of the mineral extraction site can be added, to meet the requirement of this section, if determined by the Hearing examiner.
- 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 Pursuant to the Final MDNS, roadside drainage shall be designed in consultation with and approved by the Chelan County Public Works Department.
- 37.4.2 As conditioned, the applicant would comply with the Final MDNS and comments received from Chelan County Public Works Department.
- 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 There is no blasting proposed. The initial rock crushing for the road construction is anticipated to take (1) to (3) months and would use an excavator and mobile crusher.
- 37.5.2 This provision would not apply.
- 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 adhere to WAC 173-60-040 for maximum permissible environmental noise levels. As stated above, the development would be a minimum of 600 ft from the nearest residentially zoned property boundary.
- 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 property boundary and associated excavation would be a minimum of 600 ft from the nearest property boundary, and a min of 1,600 ft from Upper Wheeler Ridge Road.

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 The majority of the proposed development is an existing rock and gravel outcrop with little top soil. Topsoil would be brought to the development in adequate supply for reclamation purposes.

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 Examiner.
 - 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 Examiner 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 Examiner, 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 Pursuant to the SEPA Checklist and the Final MDNS, the proposed extraction and associated rock crushing shall not exceed 17,000 cubic yards during initial development

including public and private road building. Rock crushing shall not exceed 3,000 cubic yards in any (2) year period thereafter.

37.13.3 A legal description of the site;

37.13.3.1 SECTION 17, TOWNSHIP 21 NORTH, RANGE 20, E.W.M., CHELAN COUNTY, WASHINGTON, EXCEPT THAT PORTION THEREOF CONVEYED TO CHELAN COUNTY FOR ROAD PURPOSES BY DEED RECORDED DECEMBER 5, 1955, UNDER AUDITORS NO. 502399, IN VOLUME 544, PAGE 389.

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;

37.13.4.1 Pursuant to the SEPA Checklist, Final MDNS and the HMMP the appropriate mitigation measures have been addressed.

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 The applicant has stated that there would be no blasting associated with this development. The estimated truckloads per day from the rock pit to the road locations on Sections 16 and 17 are estimated at 20 loads road building/improvements. Estimated hours of operation per the Final MDNS, rock crushing can only occur during 7:00 am to 5:30 pm Monday – Saturday.

37.13.6 Proposed hauling routes to and from the site;

37.13.6.1 There would be no hauling routes to and from the property. The hauling would take place and from the mineral extraction site to the road realignment location and orchard development location on the subject property.

37.13.7 A completed environmental checklist;

37.13.7.1 A SEPA Checklist was completed and submitted for the establishment of a (3) unit orchard complex, including this mineral extraction proposal, in May 2020.

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 restoration plan would not include the creation of a lake, pond or swamp. Significant back-filling and compaction are

not required. The subject property would be regraded to slope and planted in orchard trees.

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 October 5, 2022.
39. Appearing and testifying was Ben Alworth. Mr. Alworth 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 staff report and had no objections to any of the representations contained therein. He did question the request by WSDOT for an access permit.
40. No member of the public testified at the hearing.
41. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
42. 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 filing 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)(G), the noise levels shall be in accordance with the provisions of Chapter 173-60 WAC.

6. 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.
7. Pursuant to CCC Section 11.93.240(1)(K), topsoil shall be retained on the subject property to ensure an adequate supply for reclamation.
8. Pursuant to CCC Section 11.93.240(1)(L), one copy of the approved exaction and reclamation plans and specifications shall be kept on the subject property.
9. Prior to the commencement of the development the applicant shall meet the conditions of approval for the MDNS issued December 30, 2020 and the HMMP issued May 2021.
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 the requirements of the Department of Ecology:
 - 11.1. 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.
12. Pursuant to the requirements of the Chelan County Public Works Department:
 - 12.1. Pursuant to CCC, Chapter 15.30, and SEPA 2018-326, Upper Wheeler Road shall be improved. The improvements shall include: grading and leveling of the road, improving drainage, adding gravel as needed for stabilization and rerouting of several section of the county road (vacation and dedication required).
 - 12.2. No traffic Impact study would be required at this time from Chelan County Public Works, but if the permitted use changes, then a review from Chelan County Public Works would be required to determine if a Traffic Impact Study would be required.
 - 12.3. Pursuant to CCC, Section 10.20.410(2), addresses are assigned based on road origin and shall contain digits indicating the address from origin of the road to the primary access location for the subject property.
 - 12.4. The applicant would be required to show the dimensions and type of material proposed for the internal roads on the CUP Site Plan for the proposed development. The internal roads shall meet the Rural EVAR standard (Standard Plan PW-22). All dead-end roads shall have an EVAR turnaround (Standard Plans PW-23 A or B).
 - 12.5. Pursuant to CCC Chapter 15.30, Article VI, Construction Plans shall be required for approval of the County Engineer.
 - 12.6. Pursuant to CCC, Section 15.30.340, the applicant would be required to obtain a Chelan County Approach Permit prior to construction any accesses to the county road.
 - 12.7. Pursuant to CCC Section 13.18.340(9), a Drainage System is required, show any necessary easements in accordance with the approved drainage plan.
 - 12.8. Pursuant to CCC Chapter 13.18, A Drainage Report and Plan for complete Wheeler Ridge LLC orchard development would be required if any new impervious surface of 5,000 sq is created/disturbed. The Drainage Report shall be submitted to Chelan County

Public Works and must be reviewed and approved. This shall be completed during the submittal of any permits.

- 12.9. 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 the 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.'

13. Pursuant to WA DNR requirements the applicant shall:

- 13.1. The single rock pit location as it appears in the application materials appears to be consistent with under the Class IV-General Forest Practices Application (FPA 2707219).
- 13.2. Unless the aforementioned existing rock needs to be expanded from the current approximate (1) acre in size, or if additional new rock pits are being proposed, no amendment to FPA #2707219 or a new FPA would be required from the WA DNR Forest Practices.
- 13.3. If a new rock pit is proposed on non-forest land, no FPA would be required.
- 13.4. Rock pits on Forested lands are to adhere to resource protection as noted in WAC 222-24-060.

14. Pursuant to WA Fish and Wildlife requirements, Mitigation Measure 15 of the Final MDNS (issued December 30, 2020) issued for the Wheeler Ridge, LLC, Timber Harvest and Orchard Development to applicant Wheeler Ridge, LLC, requires the applicant to develop and implement a habitat management and mitigation plan (HMMP May 2021).
15. The applicant shall provide any necessary line extensions and any associated easements pursuant to the standards of Chelan County PUD No. 1.

IV. DECISION

Based upon the above noted Findings and Fact and Conclusions, CUP 2022-210 is hereby **APPROVED**, subject to compliance with all Conditions of Approval.

Dated this 10 day of October, 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.