

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, DECISION AND CONDITIONS
CUP 2023-145)	OF APPROVAL
Microsoft Corporation)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on June 7, 2023, 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. This is an application for a Conditional Use Permit requested for a High and Low Impact Utility. This application proposes constructing four (4) water tanks that are to be used as a back-up water supply for the Microsoft data center buildings. Each water tank would be approximately 60-feet tall and 60-feet wide and would hold up to 385,000 gallons of water.
2. The applicant/owner is Microsoft Corporation, 1 Microsoft Way, Redmond, WA 98052. The agent is Environmental Systems Design / Chad Mendell.
3. The project location and parcel numbers are 5375 Malaga-Alcoa Highway, Malaga, WA, 22-21-35-100-060. The subject property is 72.5 acres in size and the current legal description is: "That portion of Section 35, Township 22 North, Range 21 E.W.M., situate in the County of Chelan, State of Washington, more particularly described as follows: All of the northeast quarter of said Section 35 lying southerly of Chelan County Highway No. 1, except the westerly 1130 feet of said subdivision." The applicant has submitted for a Boundary Line Adjustment (BLA 23-165) that is currently being processed. Once recorded, the new legal description for the subject property will be "Lot A of BLA 2023-165".
4. The property is outside of an Urban Growth Area.
5. Existing land zoning is Rural Industrial (RI). The subject property is currently vacant, however, prior to being bought by the Port of Chelan County (and subsequently by Microsoft), the property had been an orchard and used for agricultural purposes. CPA 21-118 was approved by the Chelan County Board of Commissioners on December 14, 2021 and ZC 21-119 was approved by the Hearing Examiner on January 20, 2022 to change the Comprehensive Plan mapping and associated zoning of the subject property (and two adjacent properties) from Rural Residential/Resource 5 (RR5) to Rural Industrial (RI). BP-230107 was issued on March 29, 2023 for a 4'-28'H X 826'L SOLDIER PILE RETAINING WALL. A SEPA MDNS for this building permit was issued on March 28, 2023, that included development of all three parcels owned by Microsoft for their proposed datacenters and associated infrastructure buildout. Building permits for another retaining wall and for the first datacenter have been applied for and are currently under review.
6. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped March 20, 2023. The proposed project does not require a vulnerability report, pursuant to CCC Chapter 11.82.
7. Surrounding properties:
North: Malaga-Alcoa Hwy. / Rural Industrial (RI)

South: Vacant land; Rural Residential/Resource 20 (RR20).

East: Vacant land; Rural Residential/Resource 20 (RR20) and Rural Industrial (RI).

West: Agricultural use; Rural Industrial (RI).

8. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property contains mule deer winter range habitat, and shrubsteppe habitat. Therefore, the provisions of Chelan County Code (CCC) Chapter 11.78, would apply. A comment letter received from the Washington Department of Fish and Wildlife (WDFW) recommended that the applicant have a site-scale assessment for FWHCA ecological functions and values (which include mule deer and shrubsteppe habitat) performed on the subject property consistent with CCC Section 11.78.010(3). If this assessment finds critical habitats exist on the subject property, a Habitat Management and Mitigation Plan (HMMP) shall be prepared consistent with the requirements of CCC 11.78.060. The Hearing Examiner sets as Condition of Approval that a habitat assessment be performed.
9. Based on the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, no wetlands are indicated on or adjacent to the subject property. Therefore, the provisions of CCC Chapter 11.80 Wetland Areas Overlay District would not apply.
10. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped March 20, 2023. The proposed project does not require a vulnerability report, pursuant to CCC Chapter 11.82.
11. Chelan County GIS map layer does indicate that the subject property is located within a potential geologic hazard area. Therefore, the provisions of CCC Chapter 11.86 would apply to any new structures.
12. Pursuant to RCW 27.53.020, if cultural resources are found during construction, the applicant would be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes, and Chelan County Community Development. A cultural resource report (2022-01-00200) that the Washington State Department of Archaeology and Historic Preservation (DAHP) concurred with in 2022 has already been prepared for this project. The proposed development is not anticipated to directly impact 45CH1080, but any work within the boundary of this archaeological site would require a DAHP permit.
13. This proposed development is part of the site preparation and phased construction of three (3) approximately 250,000 sq.ft. data center buildings along with supporting infrastructure buildout, which includes a 4 ft. to 28 ft. tall by 826 ft. long soldier pile retaining wall, a new electrical substation (switchyard), up to four water storage tanks, and transmission line upgrades that consists of re-terminating, relocating and upgrading three existing transmission lines. Commencement of use to occur upon receipt of all required permitting.
14. The primary access for the proposed development would be off of Malaga-Alcoa Hwy onto an internal driveway.
 - 14.1 Pursuant to the MDNS issued on March 28, 2023 for the entire Microsoft complex, the applicant shall complete the following:
 - 14.1.1 A Traffic Impact Analysis (TIA) shall be required. Off-site and frontage improvements may be required if the TIA indicates mitigation is necessary (e.g. turn lanes)
 - 14.1.2 The applicant is required to obtain or demonstrate a Chelan County Approach Permit for any existing and proposed accesses from Malaga-Alcoa Hwy. Access to the County road shall meet the Industrial/Commercial Driveway Approach standard (Standard Plan PW-26).

- 14.1.3 A Lot Access Plan shall be required in accordance with Chelan County Code (CCC) Title 15 and CCC Section 12.30.030(C). This plan shall include plan view, vertical profile, provisions for stormwater drainage and grading limits.
- 14.1.4 The internal access roads shall meet, at a minimum, the Rural Emergency Access Road standard (Standard Plan PW-22) and have adequate emergency vehicle turnaround per Standard Plan PW 23 A&B.
- 14.1.5 The applicant shall submit construction plans and reports for all required improvements on the internal road in accordance with CCC Section 15.30.650.
- 14.2 Pursuant to the comment letter issued by Chelan County Public Works on May 2, 2023, the applicant shall complete the following during the water tank installment phase:
 - 14.2.1 Pursuant to CCC Section 15.30.340 the applicant shall be required to construct the access approaches onto Malaga Alcoa Highway to meet the County's Temporary Construction Approach (Standard Plan PW-27) for the construction phase of the project.
 - 14.2.2 The completed project shall have Industrial/Commercial Driveway Approach(es) (Standard Plat PW-26).
 - 14.2.3 The applicant shall be required to obtain a Chelan County Approach Permits prior to constructing the Temporary Construction Approach and the Industrial/Commercial Driveway Approach(es). The Industrial/Commercial approach apron shall be paved.
 - 14.2.4 Pursuant to CCC Chapter 15.30 the applicant shall be required to construct the internal roads to a Rural Emergency Access Road standard (Standard Plan PW-22) with a Rural Emergency Vehicle Turn-around (Standard Plan PW 21-A or B). The location of the turnaround shall be approved by Chelan County Public Works..
- 15. Domestic Water: Domestic water would be provided by expansion of the Malaga Water District.
- 16. The subject property would continue to be provided power by an extension of the Chelan County PUD.
- 17. The applicant must comply with CCC Chapter 7.35 Noise.
- 18. As conditioned, the visual impact is anticipated to be minimal.
- 19. The applicant submitted an environmental checklist on February 23, 2023, to be processed along with BP-230107. This submitted SEPA Checklist was for the construction of the entire proposed Microsoft complex, which is up to three (3) datacenters and the buildout of the associated infrastructure, which included the four (4) water tanks of this proposal 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 an Optional Mitigated Determination of Non-significance (MDNS) was issued on March 28, 2023. The SEPA Checklist and MDNS are included within the file of record and adopted by reference. No appeal was filed.
- 20. The Notice of Application was referred to surrounding property owners within 300 ft. (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on April 19, 2023, with comments due May 3, 2023. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval:

Agencies Notified	Response Date	Nature of Comment
Chelan County Fire Marshal	April 19, 2023	The subject property is located within Fire District #1. The proposed tanks

Agencies Notified	Response Date	Nature of Comment
		will supply future fire hydrants. Planned access is adequate and internal roads are required to meet CCC Title 15.
Chelan County Building Official		No Comment
Chelan County Public Works	May 2, 2023	The completed project shall have Industrial/Commercial Driveway Approaches (Standard Plan PW-26) and the applicant shall construct a Rural Emergency Vehicle Turn-around on site and also provide the dimensions and materials to be used for the proposed parking area. If the applicant creates over 5,000 sq.ft. of impervious surfaces, then a Drainage Report and Plan would be required.
Chelan County PUD		No Comment
WA Dept. of Ecology	May 1, 2023	The NPDES Construction Stormwater General Permit from the Washington State Department of Ecology is required if there is a potential for stormwater discharge from a construction site with disturbed ground.
WA Dept. of Archaeology and Historic Preservation		No Comment
Yakama Nation		No Comment
Chelan-Douglas Health District		No Comment
Confederated Tribes of Colville	May 3, 2023	The applicant needs to leave the hillside untouched with a buffer at the base.
Chelan County Fire District No. 1		No Comment
Washington Dept. of Fish and Wildlife	May 4, 2023	A site-scale assessment for FWHCA ecological functions and values (which include mule deer and shrubsteppe habitat) consistent with CCC Section 11.78.010(3) shall be prepared. If critical habitats are found to exist on the subject property, a Habitat Management and Mitigation Plan (HMMP) would then need be prepare consistent with the requirements of CCC 11.78.060.

21. The application materials were submitted on March 20, 2023.

22. A Determination of Completeness was issued on April 11, 2023.
23. The Notice of Application was provided on April 19, 2023.
24. The Notice of Public Hearing was issued on May 27, 2023.
25. The proposed development is located in the Rural Industrial (RI) zoning and therefore reviewed under the RI zoning criteria and provisions:
 - 25.1 Uses appropriate for these areas include: industrial facilities and services; intensification of development on lots containing isolated nonresidential uses; agriculture; forestry; caretaker residence for industrial facilities; and natural resource support facilities and services. 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: mineral resource activities.
 - 25.2 New industrial sites may be designated during yearly comprehensive plan amendments if consistent with criteria and requirements outlined in RCW 36.70A.365 and the goals and policies of this comprehensive plan. Such a new industrial area would be designated as an urban growth area and have the potential to receive urban services.
 - 25.3 The Hearing Examiner finds that the project, as conditioned, is consistent with the goals and policies of the Resource Element within the Chelan County Comprehensive Plan.
26. CCC Section 14.98.498: Data Center. "Data center" means a facility where a large group of networked computer systems and associated components are used for the remote storage, processing, and/or distribution of large amounts of data. A server farm, telecom hotel, carrier hotel, or any other term applicable to facilities which are used for these specified purposes shall be classified as a data center.
27. CCC Section 14.98.1915: Utility, high impact. "Utility, high impact" means buildings, structures and facilities in public or private ownership relating to the furnishing of utility services such as electric, gas, communication, water, sewer and technology infrastructure. High impact public utilities shall include, but are not limited to, generating and switching stations, substations, pumping stations and antennas or repeaters when not installed on a building.
28. CCC Section 14.98.1920: Utility, low impact. "Utility, low impact" means buildings, structures and facilities in public or private ownership relating to the furnishing of utility services such as electric, gas, communication, water, sewer and technology infrastructure. Low impact utilities shall include, but are not limited to, poles, lines, pipes, antennas, repeaters, or small wireless communication facilities (SWF) when installed on a building, carrier hotels and similar technology infrastructure.
29. CCC Section 11.12.010: Permitted, accessory and conditional uses. The proposed project is located in the RI zoning district of Chelan County. According to CCC Section 11.04.020 District Use Chart, a Utility, high impact requires a Conditional Use Permit in the RI zoning district.
30. Chelan County Code 11.26.020 Standards. All development in this zone shall meet the applicable provisions of the Chelan County Code, including without limitation the following:
 - 30.1 Minimum lot size: Lot size shall be in accordance with the Chelan-Douglas health district standards for public or community water and sewage disposal.
 - 30.2 Maximum building height: sixty feet.
 - 30.3 Maximum Lot Coverage. Buildings and structures shall not occupy more than seventy percent of the lot area.

- 30.4 Minimum Setback Distances.
- 30.4.1 Front yard: 10 ft. from the front property line or 40 ft. from the street centerline, whichever is greater.
- 30.4.2 Rear yard: 0 ft. from the rear property line, except 30 ft. from the rear property line when the lot abuts any zone other than an industrial district.
- 30.4.3 Side yard: 0 ft. from the side property line, except 30 ft. from the side property line when the lot abuts any zone other than an industrial district.
- 30.4.4 Finding of Fact: The proposed water tanks meet all dimensional standards in the RI zoning district.
- 30.4.5 Hearing Examiner Finding: Setbacks would be reviewed at the time of building permit submittal.
- 30.5 Off-street parking requirements in this district shall be as follows:
- 30.5.1 Other off-street parking and loading shall be provided as prescribed in Chapter 11.90 of this title.
- 30.5.2 Hearing Examiner Finding: The proposed water storage tanks are exempt from requiring off-street parking since they are not habitable space and the proposed use is not found in Table 11.90-3.
- 30.6 Landscape standards shall be provided as prescribed in CCC Chapter 15.50, Development Standards, as amended.
- 30.6.1 Hearing Examiner Finding: The applicant submitted a preliminary landscaping plan for the entire Microsoft infrastructure build-out that meets the landscaping requirements of CCC Chapter 15.50. Specifically, for the water storage tanks, a fenced perimeter around all four of them is proposed, which is allowed pursuant to CCC Section 15.50.050(1) for safety considerations.
31. The project is consistent with CCC 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:
- 31.1 All criteria required for a specific use by this chapter can be satisfied.
- 31.1.1 Section 11.93.180 (High and Low Impact Utilities) applies to the proposed on-site water storage tanks supporting the project's use. The conditional use will comply with the requirements of this section:
- All equipment storage will be located within enclosed buildings
 - The Project is not located within a residential zone.
 - The site will be fenced.
 - Landscaping for the overall site will comply with Chapter 15.50
 - The overall lot complies with the minimum lot size.
- 31.1.2 Hearing Examiner Finding: The criteria for a High and Low Impact Utility use have been addressed by the applicant in the submitted application materials and the proposed project, as conditioned, would satisfy the code requirements for the proposed use.

- 31.2 The design standards of the zoning district within which the lot is located, critical area regulations, and all other applicable development standards and regulations can be met.
- 31.2.1 The project property is zoned as Rural Industrial (RI). The primary use of the project is Data Center, which is a permitted use in an RI Zone based on Chelan County Code Chapter 11.04.020 (District Use Chart).
- 31.2.2 The two elements associated with the project that require conditional use permit approval are:
- On-Site Water Storage Tanks (4 Total); this application
 - On-Site Electrical Utility Substation; owned and operated by Chelan County PUD; separate application by the Chelan County PUD.
- 31.2.3 The water storage tanks are an ancillary use to the primary data center use. The purpose of the onsite water storage tanks is to provide additional storage for Malaga Water District-supplied water, to be used for space cooling equipment (HVAC equipment) and fire protection in the event that water service is disrupted from the Malaga Water District.
- 31.2.4 The project includes four water storage tanks. Each tank will be no higher than 60' above grade and no wider than 60' in diameter.
- 31.2.5 The site is broadly mapped as a landslide hazard per Chelan County. Per the Washington Department of Nature Resource (WDNR), the site lies within a deep-seated landslide (Landslide ID: 3699) that is indicated as dormant. The site will include a 250' setback from the start of the steep slope area to the proposed buildings and water storage tanks. The project will install a rock catchment fence along the start of the steep slope.
- 31.2.6 The Washington Department of Fish and Wildlife identify a potential Habitat Conservation Area for shrub steppe. A study will be conducted identify specific shrub steppe habitat areas on property. The study will also identify mitigation measures if the shrub steppe habitats fall within the area that will be developed as part of this project. Aerial maps show the potential for the shrub steppe habitat along the south end of the site, away from the proposed area of development. Existing orchards / agriculturally developed land are present in the future location of the water storage tanks and are therefore not anticipated to be located within shrub steppe habitat.
- 31.2.7 The Washington Department of Fish and Wildlife identify a potential Habitat Conservation Area for golden eagles. An environmental study was conducted on the property by the property owner. The study found that the property currently provides no nesting or roosting habitat and subsequent development would not change that condition; therefore, the probability of the proposed project affecting golden eagles is low and no further study or analysis should be necessary. The water storage tanks are not anticipated to be located within the golden eagle habitat.
- 31.2.8 A cultural resources study conducted on the property by the property owner identified three talus pits along the sound end of the property. The proposed project does not include modification of the area where these talus pits are located. A report of our findings was submitted to the Washington Department of Archaeology and Historic Preservation (DAHP) under project tracking code 2022-01-00200. On 10/04/2022, the DAHP wrote a formal concurrence that the

talus pits would not be impacted by the proposed project, including the water storage tanks.

- 31.2.9 Hearing Examiner Finding: As conditioned, the proposed development would meet applicable zoning and critical areas regulations.
- 31.3 Compatibility with the adjacent uses and the protection of the character of the surrounding area.
 - 31.3.1 The water storage tanks are compatible with the Rural Industrial zoning classification of the project property and the surrounding rural / agricultural / industrial character of the surrounding area. The water storage tanks will be located towards the rear of the project property, approximately 1,000' from the property's northern street frontage (Malaga Alcoa Highway).
 - 31.3.2 Hearing Examiner Finding: The proposed development is isolated in location; it is located past Malaga just before the moth-balled Alcoa plant in an area of the County historically used for industrial and agricultural use. The Port of Chelan County is in the process of buying several properties to the west of the project and rezoning them Rural Industrial for potential industry use. Historically these properties had been cultivated as orchards with residences on them. Currently the closest neighboring residence to the proposed project is approximately 1,500 ft. (APN 222135120150), the next closest residences are approximately 2,000 ft. away (APNs 222135120200 and 222135130175), with all other residences being more than 3,000 ft. away. Based on the location of the proposed water tanks in relation to neighboring residences, the likelihood of nuisance noise would not be anticipated. As conditioned, the proposed development would be compatible with the character of the surrounding area
- 31.4 Detrimental impacts on the natural environment and productive use of surrounding natural resource lands can be mitigated or avoided.
 - 31.4.1 We believe that the private water storage tanks will not have detrimental impact on the natural environment nor the productive use of the surrounding natural resources. The Malaga Water District is increasing the capacity of the water system serving the project property. The Chelan County PUD is adding an on-site electrical utility substation to support the project's primary use. The water storage tanks, by themselves, do not increase the water demand on the existing domestic water infrastructure.
 - 31.4.2 Hearing Examiner Finding: The comment letter received from WDFW recommended including a requirement as a condition of approval for the applicant to prepare a site-scale assessment for FWHCA ecological functions and values (which include mule deer and shrubsteppe habitat) consistent with CCC Section 11.78.010(3). If critical habitats are found to exist on the subject property, a Habitat Management and Mitigation Plan (HMMP) would then need be prepared consistent with the requirements of CCC 11.78.060. As conditioned, the proposed development would not be detrimental to the natural environment or the productive use of adjacent resource lands.
- 31.5 No conditional use permit shall be issued without a written finding that:
 - 31.5.1 After adequate opportunity for review and comment, all providers of water, sewage disposal, schools, and fire/police protection serving the development have issued a letter that adequate capacity exists or arrangements have been made

- to provide adequate services for the development. No county facilities will be reduced below adopted levels of service as a result of the development.
- 31.5.2 The water storage tanks, by themselves, do not increase water demand, sewage disposal or demand on schools. The increased demand on police and fire department due to the water storage tanks alone are expected to be negligible.
- 31.5.3 Hearing Examiner Finding: Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development. All received comments are included in the file of record. As conditioned, the proposed development would not result in county facilities reduced below adopted levels of service.
- 31.6 The proposed use shall not result in undue adverse impacts affecting the public health, safety and welfare.
- 31.6.1 The water storage tanks, by themselves, do not have a quantifiable impact on public health, safety or welfare of the surrounding area. The on-site water storage tanks will only serve the landowner of this property; the property will be fully fenced as part of the project's primary use (data center).
- 31.6.2 Hearing Examiner Finding: The comment letter received from the Fire Marshal's Office stated that these water storage tanks would be used to provide for the fire flow requirements for future buildings onsite and each one should be permitted through the Fire Marshal's Office. The Hearing Examiner adopts this requirement as a condition of approval. As conditioned, the proposed development is not anticipated to result in an adverse impact on public health, safety and welfare.
- 31.7 Adequate provisions have been provided for roads, ingress and egress, stormwater, parking and loading, domestic and irrigation water, sanitary facilities, power, fire protection, and other necessary facilities, improvements or services consistent with the requirements of Titles 11 and 15 of the Chelan County Code.
- 31.7.1 The water storage tanks, by themselves, do not have occupancy. Impacts on roads, traffic, parking and loading will be limited to periodic maintenance staff and contractors that will visit the site.
- 31.7.2 Roads, ingress and egress: The subject property fronts and accesses off of Malaga-Alcoa Highway. Pursuant to Title 15.30.340 the applicant shall be required to construct the access approaches onto Malaga Alcoa Highway to meet the County's Temporary Construction Approach (Standard Plan PW-27) for the construction phase of the project. The completed project shall have Industrial/Commercial Driveway Approach(es) (Standard Plat PW-26). The applicant shall be required to obtain a Chelan County Approach Permits prior to constructing the Temporary Construction Approach and the Industrial/Commercial Driveway Approach(es). The Industrial/Commercial approach apron shall be paved.
- 31.7.3 Stormwater: The applicant shall comply with CCC Title 13; Chelan County Stormwater Guidelines and Procedure.
- 31.7.4 Domestic and Irrigation Water: Domestic water is provided by the Malaga Water District.
- 31.7.5 Sanitary Facilities: Does not apply to application.

- 31.7.6 Power: Power is provided by Chelan County PUD.
- 31.7.7 Fire Protection: The proposed development is located Chelan County Fire District #1 and each water tank would be permitted through the Fire Marshal's Office.
- 31.7.8 Parking and Loading: Off-street parking must comply with CCC Section 11.93.130 regarding off-street parking.
- 31.7.9 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
- 31.8 Noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties and to the vicinity can be mitigated or avoided.
 - 31.8.1 Noise: The water storage tanks are not noise producing devices. Pumps circulating water into and out of the tanks will be located within a building which will curtail the noise generated by the pumps.
 - 31.8.2 Light: The water storage tanks will have lights around the tanks. The lights will be cut-off type fixtures to mitigate spillage near the property line.
 - 31.8.3 Heat: The water storage tanks are not heat producing devices.
 - 31.8.4 Water Quality: Water discharged from the tanks will not be used for domestic water. Use will be limited to water used for space cooling equipment (process water) and the fire protection system. Water from the storage tanks will be limited to the landowner's use, with backflow prevention. Stored water will not be introduced to the groundwater system.
 - 31.8.5 Smoke, Duct, Vibration, Electrical Disturbances. The water storage tanks do not produce smoke, dust, vibration or electrical disturbance.
 - 31.8.6 Hearing Examiner Finding: Based on the application materials submitted by the applicant, the operation of the water tanks on the subject property would not impact adjacent properties in the vicinity with noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards, or any other related impacts. Any impacts on adjacent properties can be avoided or mitigated as conditioned.
- 31.9 The granting of the proposed conditional use permit is consistent and compatible with the intent, goals, objectives and policies of the comprehensive plan, and any implementing regulation.
 - 31.9.1 See response to 31.2 above.
 - 31.9.2 As conditioned, the proposed water tanks would be consistent with the goals and policies of the Comprehensive Plan.
- 32. The project is consistent with Chelan County Code, Section 11.93.180 High and low impact utilities in the following respects:
 - 32.1 Equipment storage shall be within an enclosed building.
 - 32.1.1 Per the submitted application materials, no equipment for the water storage tanks are proposed to be stored on site nor are storage buildings proposed. Therefore, this criterion would not apply to the proposed project.

- 32.2 In all residential districts, no equipment storage shall be permitted on-site.
- 32.2.1 The zoning of the subject property is Rural Industrial; therefore, this criterion would not apply.
- 32.3 The use shall be fenced.
- 32.3.1 Per the submitted application materials, the water storage tanks are proposed to be fenced. Therefore, this criterion would be satisfied.
- 32.4 The use shall be landscaped per the requirements of CCC Chapter 15.50 of this code.
- 32.4.1 Landscaping is required per CCC, Chapter 15.50. Pursuant to CCC 15.50.050, variations in landscaping may be permitted including the allowance for the use of fencing for part or as a replacement for required landscaping area. Additionally, per CCC 15.50.055(5), the administrator may waive all or part of the landscaping requirement for safety considerations. Being as this is a public utility, it is beneficial for the security fencing to remain unobstructed by landscaping. No landscaping shall be required around the water storage tanks.
- 32.5 The minimum lot size in the district that utility use is located in may be waived on a finding that the waiver will not result in noise or other detrimental effects to adjacent properties.
- 32.5.1 The subject property meets the minimum lot size in the Rural Industrial zoning district. Per the submitted application materials and staff analysis, the proposed development would not have detrimental effects to adjacent properties.
33. The Hearing Examiner has reviewed the applications and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code, the proposed development would not have detrimental effects to adjacent properties.
34. An open record public hearing after legal notice was provided was held on June 7, 2023.
35. The File of Record, Chelan County Department of Community Development Staff Report, and exhibits were received, admitted into the record and considered by the Hearing Examiner.
36. Appearing and testifying on behalf of the Applicant and property owner was Chad Mendell. Mr. Mendell testified that he is an agent for the Applicant and property owner and is authorized to appear and testify on its behalf. Mr. Mendell testified he had reviewed the staff report and had no objections to any of the representations contained therein. He has also reviewed the proposed Conditions of Approval and had no objections to any of those. Mr. Mendell testified that the purpose of the water storage was for cooling of the data center and fire suppression.
37. No member of the public testified at this hearing.
38. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
39. 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. Based on review of the application materials submitted, the project is consistent with the Chelan County Comprehensive Plan.
3. The project meets the criteria in Chelan County Code, Section 11.93.040, Conditional Use Permit.

4. The project meets the criteria in Chelan County Code, Section 11.93.180 High and Low Impact Utilities.
5. As conditioned, this project is consistent with the Chelan County Zoning Code.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based upon the above noted Findings and Fact and Conclusions, CUP 2023-145 is hereby **APPROVED**, subject to the conditions of approval.

IV. 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 11.93.040(10), the final Conditional Use Permit shall be in conformance with the submitted application of record, including site plans date stamped March 20, 2023 or as amended by this decision.
3. Pursuant to CCC Section 11.93.180(3), the proposed water storage tanks and associated infrastructure shall be fenced in substantial conformance with the site plan of record and the preliminary planting plan, both date stamped March 20, 2023,
4. Pursuant to CCC Section 15.50.055, the landscaping proposed for the entire Microsoft infrastructure build-out shall be phased based on the structure being permitted and shall be in conformance with the preliminary planting plan date-stamped March 20, 2023. Therefore, the landscaping proposed as part of structure EAT14 shall be in place prior to its final building inspection, the landscaping proposed as part of structure EAT13 shall be in place prior to its final building inspection, and the landscaping proposed as part of structure EAT12 shall be in place prior to its final building inspection.
5. Pursuant to CCC, Section 11.93.110, a conditional use permit shall become void if not acted upon, including but not limited to submitting a building permit or the placement of all infrastructure, within three years after approval or such other time period as established by the hearing examiner. The applicant may request a one-year extension, to be reviewed administratively, if the applicant submits a written request with community development thirty days prior to expiration.
6. Pursuant to CCC Section 11.78.010(3), the applicant shall perform a site-scale assessment for FWHCA ecological functions and values (which include mule deer and shrubsteppe habitat). If this assessment finds critical habitats exist on the subject property, a Habitat Management and Mitigation Plan (HMMP) shall be prepared consistent with the requirements of CCC 11.78.060.
7. 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.
8. Pursuant to RCW 27.53.020, if the applicant or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this

application, the applicant/ agent shall immediately notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination. If any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.

9. Pursuant to the comment letter issued by Chelan County Public Works on May 2, 2023, the applicant shall complete the following during the water tank installment phase:
 - 9.1 Pursuant to CCC Section 15.30.340 the applicant shall be required to construct the access approaches onto Malaga Alcoa Highway to meet the County's Temporary Construction Approach (Standard Plan PW-27) for the construction phase of the project.
 - 9.2 The completed project shall have Industrial/Commercial Driveway Approach(es) (Standard Plat PW-26).
 - 9.3 The applicant shall be required to obtain a Chelan County Approach Permits prior to constructing the Temporary Construction Approach and the Industrial/Commercial Driveway Approach(es). The Industrial/Commercial approach apron shall be paved.
 - 9.4 Pursuant to CCC Chapter 15.30 the applicant shall be required to construct the internal roads to a Rural Emergency Access Road standard (Standard Plan PW-22) with a Rural Emergency Vehicle Turn-around (Standard Plan PW 21-A or B). The location of the turnaround shall be approved by Chelan County Public Works.
- 10 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.
- 11 Pursuant to Chelan County Code Section 11.93.120, action of the Hearing Examiner is final, unless appealed pursuant to the judicial appeal provisions of Title 14 of the Chelan County Code.

Dated this 13 day of June, 2023.

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.