

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, DECISION AND CONDITIONS
CUP 2023-147)	OF APPROVAL
CVN, LLC)	
)	

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 an Isolated Small-Scale Business to continue and manufacture and assemble cabinets. The change of use through the CUP process is to bring the property into compliance. The applicant is not proposing any new structures associated with the proposed use. All materials are stored inside the existing building and the business operates normal business hours Monday – Friday. Currently the cabinet manufacturing shop has 1 – 4 employees.
2. The applicant/owner is CVN LLC, PO Box 147, Snohomish, WA 98290. Their agent is Ben Stanton – Stanton Land Solution, LLC, PO Box 13740, Spokane, WA.
3. The project location and parcel numbers are 11680 Eagle Creek Road, Leavenworth, WA #25-18-31-210-055. The subject property is 1.25 acres in size and the current legal description is: Lot 1 of SP 2032.
4. The property is outside of an Urban Growth Area.
5. Existing land zoning is Rural Residential/Resource 2.5 (RR2.5). The subject property currently has a 4,200 sq ft personal storage pole building (BP 170166). The development is generally flat.
6. The applicant submitted an Aquifer Recharge Disclosure Form with application, dated March 20, 2023. The proposed development does not require a vulnerability report, pursuant to Chelan County Code (CCC), Chapter 11.82.
7. Surrounding properties are zoned Rural Residential/Resource 2.5 (RR2.5).
8. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does not contain priority habitat; therefore, the provisions of CCC Chapter 11.78, would not apply.
9. 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.
10. Chelan County GIS map layer indicates that the subject property is not located within a potential geologic hazard area. Therefore, the provisions of CCC Chapter 11.86 do not apply to the development.

11. Pursuant to the National Wetlands Inventory Map 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 the CCC Chapter 11.80 Wetland Areas Overlay District would not apply.
12. 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.
13. The applicant is not proposing any new structures associated with this development.
14. The subject property would be accessed via Eagle Creek Road (a Rural Local Access Road).
15. Domestic Water/Sanitation: Domestic water would be provided by shared private well. Sanitation is provided by a septic system.
16. The subject property would continue to be provided power by the Chelan County PUD.
17. Noise is similar to other public uses. 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 March 20, 2023. 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 Determination of Non-significance (DNS) was issued on May 10, 2023. The SEPA Checklist and DNS 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 15, 2023, with comments due April 29, 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	
Chelan County Building Official	No Comments	
Chelan-Douglas Health District	No Comment	
Chelan County Public Works	April 26, 2023	Applicant would be required to comply with stormwater and 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	No Comment	
WA Dept. of Ecology	No Comment	
WDFW	No Comment	

Agencies Notified	Response Date	Nature of Comment
WA State Department of Natural Resources	No Comment	

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 15, 2023.
24. The Notice of Public Hearing was issued on May 27, 2023.
25. Chelan County Comprehensive Plan. Purpose: To maintain the range of rural development opportunities consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan. These areas can provide buffering or transitions between existing rural developments and areas of higher or lower densities. This designation should not function as an urban reserve area, although these areas may someday be incorporated into an urban growth area. Uses appropriate for these areas include: 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 intensification of existing development or new development of 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 isolate nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural populated and nonresidential uses, but do provide job opportunities for rural residents; home occupations; bed and breakfasts; and community facilities.
26. Chelan County Code (CCC), Section 11.040.020, District Use Chart. Isolated small-scale businesses, short term is permitted with an approved Conditional Use Permit (CUP) in the RR2.5 zoning district. Isolated small-scale business is defined in CCC Section 14.98.1025 as 'any businesses created to export services or products and not designed to service local needs; may include manufacturing/assembly, research facilities, telemarketing, online/telephone sales and services.'
27. 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:
 - 27.1 All criteria required for a specific use by this chapter can be satisfied.
 - 27.1.1 Criteria for an isolated small-scale business has been addressed below.
 - 27.1.2 Hearing Examiner Finding: Based on review of the application materials submitted, the criteria for isolated small-scale business can be satisfied.
 - 27.2 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.
 - 27.2.1 The proposed development would meet all the design standards associated with the RR2.5 zoning district. The subject property is 1.25 acres in size. All critical area regulations have been addressed through the SEPA process, the approved Final DNS (issued May 10, 2023).

- 27.2.2 Based on the application materials and the previously approved permit, the proposed development would meet the applicable zoning and critical areas regulations.
- 27.3 Compatibility with the adjacent uses and the protection of the character of the surrounding area.
 - 27.3.1 There are several properties in the vicinity of the Eagle Creek Road and Chumstick Highway intersection that are commercial type uses. Neighbors have automobile repair business, plant nursery, nightly rentals and home-based auto detailer.
 - 27.3.2 Hearing Examiner Finding: As conditioned, the proposed development would not be incompatible with the surrounding uses or character.
- 27.4 Detrimental impacts on the natural environment and productive use of surrounding natural resource lands can be mitigated or avoided.
 - 27.4.1 The existing building has no detrimental impacts to the natural environment and blends in with the natural surrounding resource land with each tone finishes. There are several established native tree/shrubs that are between the building and public ROW providing natural screening.
 - 27.4.2 Hearing Examiner Finding: As conditioned, the proposed development would not be detrimental to the natural environment.
- 27.5 No conditional use permit shall be issued without a written finding that:
 - 27.5.1 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.
 - 27.5.2 The building is existing with a shared well and on-site sewage system. The main fire station for the Chelan County Fire District #3 is approximately 2-mile south on Chumstick Highway.
 - 27.5.3 The requested CUP is to bring the current use into compliance with applicable zoning laws and codes to facilitate the sale of the property to the currently tenant. The business has been operating on-site for several years now and has not requested special/reduced/increased services.
 - 27.5.3 Hearing Examiner Finding: Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development. As conditioned, the proposed development would not result in county facilities reduced below adopted levels of service.
- 27.6 The proposed use shall not result in undue adverse impacts affecting the public health, safety and welfare.
 - 27.6.1 As conditioned, the proposed development would not have an adverse impact on public health, safety and welfare.
- 27.7 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.

- 27.7.1 Roads, ingress and egress: The subject property accessed off Eagle Creek Road, a county road.
- 27.7.2 Stormwater: The applicant shall comply with CCC Title 13; Chelan County Stormwater Guidelines and Procedure.
- 27.7.3 Domestic and Irrigation Water: Domestic water is provided by a shared well.
- 27.7.4 Sanitary Facilities: There is an existing on-site septic system.
- 27.7.5 Power: Power is provided by Chelan County PUD.
- 27.7.6 Fire Protection: Fire protection is provided by Chelan County Fire District No 3.
- 27.7.7 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
- 27.8 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.
 - 27.8.1 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.
 - 27.8.2 Light and Glare: Light and glare is regulated by CCC Section 11.88.080.
 - 27.8.3 Heat, Steam, Odors, Smoke and Dust: The proposed development would not generate heat, steam or odors.
 - 27.8.4 Erosion: The subject property is not located within a geologically hazardous area; a geological assessment is not required to be submitted with application.
 - 27.8.5 Water Quality: As conditioned, the proposed development would have to meet standards as required by Chelan-Douglas Health District.
 - 27.8.6 Wastes and Physical Hazards: No hazards were identified.
 - 27.8.7 Electrical Disturbance: The proposal would not result in electrical disturbances.
 - 27.8.8 Hearing Examiner Finding: 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.
- 27.9 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.
 - 27.9.1 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.
 - 27.9.2 As conditioned, the development is consistent with the goals and policies of the Comprehensive Plan and CCC.

28. The project is consistent with Chelan County Code, Section 11.93. 290 Isolated small-scale business. The intent of this section is to provide for small-scale businesses in noncommercial zones per the provisions of the comprehensive plan. Businesses shall be created to export services or products and shall not be designed to service local needs. Such uses may manufacturing/assembly, research facilities, telemarketing, online/telephone sales and service.
 - 28.1 A two-hundred-foot setback shall be maintained from all adjoining properties for new construction.
 - 28.1.1 The applicant is currently utilizing an existing structure; no new construction is proposed for this development.
 - 28.1.2 No new construction has been proposed; therefore, this provision has been met.
 - 28.2 Maximum building size shall be five thousand square feet.
 - 28.2.1 The existing structure is 4,200 square feet, less than 5,000 square feet.
 - 28.2.2 This provision has been met.
 - 28.3 Maximum of five hundred square feet may be used for a retail component of the use.
 - 28.3.1 There would be no retail space inside the existing structure.
 - 28.3.2 This provision has been met.
 - 28.4 The Hearing Examiner may limit hours of operation or require fencing, screening and/or landscape buffers to screen outside storage or any other conditions to mitigate any adverse impact to surrounding property.
 - 28.4.1 All materials are stored inside the existing building and the business operates normal business hours 8 am – 5 pm, Monday – Friday. All manufacturing occurs inside the building so noise is minimal on the exterior of the building. The delivery of materials and removal of finished products is not a daily occurrence.
 - 28.4.2 This provision has been met.
29. The Hearing Examiner has reviewed the applications and submitted materials. The information in the application, as proposed, complies with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code.
30. An open record public hearing after legal notice was provided was held on June 7, 2023.
31. 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.
32. Appearing and testifying on behalf of the Applicant/property owner was Ben Stanton. Mr. Stanton testified that he is an agent for the Applicant and property owner and is authorized to appear and testify on its 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. Mr. Stanton requested that proposed Condition of Approval No. 14.4 be modified to say it only applies if there is new access. The Hearing Examiner would note that proposed Condition of Approval No. 14.4 was misnumbered and should have been numbered as 8.4.
33. No member of the public testified at this hearing.
34. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
35. 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 11.93.290, Isolated small-scale business.
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 2023-147 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 11.93.090, 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 11.93.040(10), the final Conditional Use Permit shall be in conformance with the submitted application of record, including site plan date stamped March 20, 2023.
4. 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 the infrastructure, within three year after approval of 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.
5. Pursuant to CCC Section 11.93.040(7), noise levels shall be in accordance with the provisions of Chapter 173-60 WAC.
6. Pursuant to CCC Section 11.93.290(4), all materials are stored inside the existing building and the business operates normal business hours. The delivery of materials and removal of finished products is not a daily occurrence.
7. 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.

- 7.1. An inadvertent discovery plan must be submitted with the building permit application and kept on site during all land disturbing activities.
8. Pursuant to the requirements of the Chelan County Public Works Department:
 - 8.1. Pursuant to CCC Chapter 15.30, no frontage road improvements required on Eagle Creek Road.
 - 8.2. 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.
 - 8.3. The applicant would be required to show the dimensions and type of material proposed for the guest parking area on the CUP site plan for the proposed development. Prior to commencement of activities, the applicant shall provide Chelan County Public Works with a parking area, type of surface material proposed for the parking lot, number of parking spaces, and general parking schematic for the proposed development.
 - 8.4. Pursuant to CCC Section 15.30.310, if the Applicant proposes a new access, the applicant shall submit a Lot Access Plan so that addresses can be determined for all existing and proposed units. The Lot Access Plan must show the driveways/access location for the proposed development. This requirement may be fulfilled on a separate submittal and must be accomplished prior to the pre-Mylar submittal.
 - 8.5. Pursuant to CCC Section 10.20.200, a road naming would be required for access roads that serves three or more addressable parcels or structures. The applicant would be required to notify all affected property owners that have legal access/use to the access being named or that owns property that abuts the access. A signature of the property owner or a certified mail receipt would be required to prove such notification. That proof, a road naming application with 3 or more names and a road naming fee must be submitted to Chelan County Public Works for each of the shared accesses being named. Approval would be up to emergency services. Once a road name has been approved, a road name sign would be required to be installed by the applicant per Chelan County specs. Once the road name sign is installed, the applicant would be required to contact Chelan County Public Works for an inspection.
 - 8.6. Pursuant to CCC Section 15.30.340, the applicant would be required to construct the access approaches onto Eagle Creek Road to meet the County's Industrial/Commercial Driveway Approach (Standard Plat PW-26). The applicant would be required to obtain a Chelan County Approach Permit prior to constructing the Commercial Driveway Approach. The approach apron would be required to be paved.
 - 8.7. Pursuant to CCC Section 13.18.030(9), if a Drainage system is required, show any necessary easements in accordance with the approved drainage plan.
 - 8.8. Pursuant to CCC Chapter 13.18, a Drainage Report and Plan would be required to be submitted to Chelan County Public Works if any new impervious surface of 5,000 square feet is created and must be reviewed and approved. This shall be completed during the submittal of any building permits.
 - 8.9. 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 once the CUP is approved stating:

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

9. Pursuant to the requirements of the Chelan County Fire Marshal:
 - 9.1. The proposal/development shall conform to all applicable requirements of the International Fire Code and Chelan County Code administered by the Chelan County Fire Marshal.
 - 9.2. The minimum fire flow and flow duration requirements shall not be less than that specified in Table B105.1(1) of the IFC, except that reduction in required fire flow of seventy five percent, as approved, is allowed when the building is provided with an approved automatic sprinkler system.
 - 9.3. The Fire Marshal may modify Fire-flow requirements downward by applying fire protection credits for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire-flow requirements is impractical. Applicant is encouraged to contact this office to ascertain how the attached fire protection credits options apply to their development. Without the installation of a fire hydrant capable of delivering the required fire flow and within the required distance to the lots in question, the applicant may choose one or any combination of alternatives using the installation of automatic fire sprinklers and/or fire protection credits as approved by the Fire Marshal.
10. The applicant shall provide any necessary line extensions and any associated easements pursuant to the standards of Chelan County PUD No. 1.

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.