

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
CUPA 2023-437	)	DECISION AND CONDITIONS
Chelan Ridge Winery	)	OF APPROVAL
	)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on January 17, 2024, 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 Amendment to amend CUPA 2021-336 in order to increase the size of the proposed pavilion from 800 sq.ft. to 1,200 sq.ft and also to amend CUP 2004-020 to include a 200 sq.ft. structure to the winery operation as well. CUP 2004-020 was a request for “Places of Public and Private Assembly”, “Winery”, and “Accessory uses, which support, promote, or sustain agricultural operations and production as a secondary, subordinate, and/or supplemental element of the operation of an ongoing agricultural activity” to allow for the operation of a 6,000 sq.ft. winery; an attached 1,800 sq.ft. tasting room; a 1,000 sq.ft. deck; special events; and food service known as the “Chelan Ridge Winery”. CUPA 2021-336 was a request to amend CUP 2004-020 to include an 800 sq.ft. open-air pavilion along with a 600 sq.ft. deck to be used for a pizza oven as well as additional wine tasting and food sales.
2. The Applicant/owner is Chelan Ridge Holdings, LLC, Attn: William Swayne, 649 Manson Blvd. Manson, WA 98831.
3. The subject site is located at 900 Swartout Road, Manson, WA 98831.
4. The parcel number for the subject property is 28-22-32-607-255. The legal description is: Highline No 2 Lot 30 Lot B BA # 2005-018; 9.98 Acres.
5. The subject site is located in Chelan County, outside of an Urban Growth Area.
6. The Comprehensive Plan designation and Zoning designation for the subject site is Commercial Agricultural Lands (AC).
7. The subject property is near the top of a broad hilltop with an active vineyard surrounding the existing winery building. A 25% stable slope drops about 80 to the southwest of the proposed pavilion area and mostly level solid terrain is above and to the north.
8. The subject property is currently developed as a winery with active vineyards. Surrounding property:  
Property to the north: Orchards zoned Commercial Agricultural Lands (AC).

Property to the south: Swartout Road and orchards zoned Commercial Agricultural Lands (AC).

Property to the east: Orchards zoned Commercial Agricultural Lands (AC).

Property to the west: Swartout and Klate Roads, residential uses, and zoned Rural Residential/Resource 1 Dwelling Unit per 5 Acres (RR5).

9. According to WDFW PHS mapping, no Fish and Wildlife Habitat Conservation Areas currently exist on the property. Therefore, the provision of Chelan County Code Chapter 11.78 does not apply.
10. The water body shown on the Chelan County GIS mapping does not meet the requirements to be classified as a stream of any type per WAC 222-16-030. The water shown on the map is actually an irrigation canal and the requirements of Chapter 11.78 do not apply.
11. The subject property is located outside the shoreline jurisdiction.
12. Pursuant to the National Wetlands Inventory data, the subject property does not contain any wetlands. Therefore, the provisions of Chelan County Code Chapter 11.80 do not apply.
13. The applicant submitted an Aquifer Recharge Disclosure Form and a Vulnerability Rating sheet. The development is subject to Chelan County Code Chapter 11.82.
14. Pursuant to Federal Emergency Management Agency, FIRM map panel 5300150225A, the subject property does not contain flood plain. Therefore, the provisions of Chelan County Code Chapter 11.84 and 3.20 do not apply.
15. A geologic assessment, prepared by Heath Geotechnical Services, was submitted with CUPA 2021-336. This geologic assessment concluded that the proposed development should be classified as "No Risk". Since less than five (5) years have passed since this geologic assessment was performed, it is being adopted by reference for CUPA 2023-437 pursuant to CCC Section 11.86.010.
16. Pursuant to 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, and Chelan County Community Development.
17. Commercial building permits would be required for the open-air pavilion and the accessory structure. Construction is anticipated to commence upon completion of all required permits.
18. Traffic Circulation: The primary access is from Swartout Road, a County right-of-way. Chelan County Public Works is not requiring road improvements to Swartout Road and no Traffic Impact Study would be required at this time. Pursuant to COA #18 of CUPA 2021-336, the applicant shall dedicate additional right-of-way to make the right-of-way on Swartout Road and Klate Road 30 feet from centerline. In addition, pursuant to COA #20 of CUPA 2021-336, the applicant shall provide a site plan to Public Works showing the parking area, type of surface material, number of parking spaces, and general parking schematic.
19. Power: Existing structures on the property are served by the Chelan County PUD. New or expanded service may be required and easements would be required for all primary power sited on the parcel or secondary power that crosses one or more parcels to serve another parcel; the owner shall apply with the Chelan County PUD at the time of building permit submittal if additional power is needed.
20. Sanitation: The existing use is served by on-site septic system which was previously permitted by CDHD. The permit number on file is 04-4P360-0126. As a condition of approval, the applicant shall provide to CDHD an evaluation of the existing septic system in order to determine if a new permit is needed.



21. Water: Commercial domestic water is currently served by the Lake Chelan Reclamation District as approved by the Chelan-Douglas Health District (CDHD). As a condition of approval, the applicant shall provide verification to CDHD that there is sufficient water available for the proposed expansion.
22. Stormwater/Drainage Plan: Pursuant to CCC Chapter 13.16, if the proposed development creates over 5,000 square feet of new impervious surface, then a stormwater plan would be required.
23. Fire Protection: The project is within Fire District #5. The Fire District Chief comments state that there is adequate fire flow to serve this project.
24. Noise: The applicant would be required to meet the CCC Chapter 7.35 for noise controls. During normal operations, noise impacts are similar to surrounding uses. During special events, noise levels may increase beyond that of a typical surrounding use. Commercial operation and events shall meet the requirements of WAC 173-60.
25. Visual Impact: The existing structures and parking lot are visible from Swartout Road and Klate Road. No new visual impact is expected.
26. The Notice of Application and environmental review was referred to jurisdictional agencies, departments and adjacent property owners, within 1,000 feet excluding 60' public right-of-way, on November 15, 2023. Comments were due on November 30, 2023. Comments are addressed, as appropriate, within this decision and in the form of Conditions of Approval. The following agencies and departments were noticed:

Agencies Notified	Response Rec'd Date	Comments
Chelan County Public Works	<p>No comment was provided for CUPA 2023-437.</p> <p>Public Works provided the following comment for CUPA 2021-336.</p>	<ul style="list-style-type: none"> <li>• No Traffic Impact Study would be required at this time.</li> <li>• The applicant shall dedicate additional right-of-way to make the right-of-way on Swartout Road and Klate Road 30' from centerline.</li> <li>• Pursuant to CCC Chapter 15.30, the applicant shall construct the Private Internal Access road to meet a Rural Emergency Vehicle Access Road (Standard Plan PW-22) with an Emergency Vehicle Turnaround (Standard Plan PW-23 A or B) within the proposed project.</li> <li>• Prior to commencement of activities, the applicant shall provide Chelan County Public Works with a parking area, type of surface material proposed for the parking lot, number of parking spaces, and general parking schematic for the proposed project.</li> </ul>
Chelan County Building Official	No comment was provided for CUPA 2023-437.	<ul style="list-style-type: none"> <li>• Commercial building permits would be required for this proposal. The building department would then appropriately review and comment on the</li> </ul>

Agencies Notified	Response Rec'd Date	Comments
	The Building Official provided the following comment for CUPA 2021-336.	proposed structures, use, and equipment.
Chelan County PUD No 1	11/29/2023	<ul style="list-style-type: none"> <li>• Electrical service is available at the subject property.</li> <li>• A line extension or facility modification may be necessary.</li> <li>• Easements would be required for all primary power sited on the parcel or secondary power that crosses one or more parcels to serve another parcel.</li> <li>• The owner would need to apply for power with Chelan PUD if additional power is required.</li> </ul>
Chelan County Fire Marshal	12/12/2023	<ul style="list-style-type: none"> <li>• The Fire Marshal may modify Fire-flow requirements based on Table B105.2. This table allows for a reduction to 25% of the required fire flow but not less than 1000 gallons per minute with the installation of an NFPA 13 compliant sprinkler system.</li> <li>• The Fire Marshal may also allow 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.</li> </ul>
Fire District #5	12/8/2023	<ul style="list-style-type: none"> <li>• Fire flow is adequate to serve this proposal.</li> <li>• NFPA 13 Sprinklers shall be added to the proposed new structure and the previous deck extension area.</li> </ul>
Chelan Douglas Health District	11/29/2023	<ul style="list-style-type: none"> <li>• The expansion of pavilion suggests an increase of patrons; therefore, an evaluation of the existing septic system would be required. A new septic system permit may be required.</li> <li>• A food permit plan shall be required.</li> <li>• CDHD needs verification of the</li> </ul>



Agencies Notified	Response Rec'd Date	Comments
		water system and/or public water source.
Department of Ecology	<p>No comment was provided for CUPA 2023-437.</p> <p>Ecology provided the following comment for CUPA 2021-336.</p>	<ul style="list-style-type: none"> <li>The applicant shall be required to obtain a Winery General Permit from the Department of Ecology if wine, juice and/or wastewater production volumes surpass those quantified in Special Condition S1, Table 3 of the Permit.</li> <li>Ecology shall require Permit coverage if a facility is determined to be a "Significant Contributor of Pollutants or a Significant Industrial User" as defined in Appendix B of the Permit.</li> </ul>
Department of Fish and Wildlife	None	
Department of Archaeology	None	
Confederated Tribes of Colville	12/11/2023	<ul style="list-style-type: none"> <li>Recommends an IDP.</li> </ul>
Yakama Nation	None	

27. Public Comments: None.
28. The applicant provided an environmental checklist on July 27, 2021 in the application materials submitted for CUPA 2021-336. 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 September 15, 2021. Since CUPA 23-437 does not exceed the sq.ft. threshold listed in CCC Section 13.04.080, no new SEPA was required and the SEPA Checklist and DNS of CUPA 2021-336 are included within the file of record and adopted by reference.
29. The application was submitted on October 17, 2023.
30. A Determination of Completeness was issued on November 15, 2023.
31. The Notice of Public Hearing was provided on January 6, 2024.
32. Chelan Comprehensive Plan - The proposed development is for places of public and private assembly which is not specifically addressed within the Chelan County Comprehensive Plan. However, the proposed development is located within Commercial Agricultural Lands (AC) designation states:
  - 32.1 Purpose: The proposed development is for a winery which is not specifically addressed within the Chelan County Comprehensive Plan. However, the proposed development is located within Commercial Agricultural Lands (AC) designation states: "Purpose: To assure the long-term conservation of commercial agricultural lands; to protect and preserve the farmers ability to farm; encourage existing and future agricultural land uses as a viable land use and a significant economic activity within the community; and, to

protect agricultural land of long term commercial significance not already characterized by urban development from encroachment and incompatible uses.

- 32.2 Uses appropriate for these areas include: agriculture; open space; residential; and forestry. Additional use may be considered with supplemental provisions. These provisions shall address performance standards, impacts to the surrounding area, and be consistent with the goals and policies of the comprehensive plan. Such uses may include: natural resource support facilities and services; mineral resource activities; intensification of existing small scale recreational or tourist uses that rely upon a rural setting but that do not include a new residential component; intensification of development on lots containing existing isolated nonresidential uses; home occupations; bed and breakfasts; and community facilities.
- 32.3 Hearing Examiner Finding: Wineries generally have associated agricultural land for the vineyard that produces the grapes for wine making. The intent of the proposed "Places of Public/Private Assembly" is to encourage agri-tourism, serving not only the residents of Chelan County, but visitors as a possible destination point. The subject property would maintain its rural characteristics. As proposed and conditioned, the application complies with the Goals and Policies identified in the Chelan County Comprehensive Plan.
33. Chelan County Code, Section 14.98.2005, Winery: Per code definition, "Winery" means a facility where fruit or other products are processed (i.e., crushed, blended, aged, and/or bottled) and may include as incidental and/or accessory to the principal use a tasting room, food and beverage service, places of public/private assembly, and/or retail sales area. Distilleries and breweries, for the purposes of placement in various zoning districts and regulation requirements, are synonymous with winery.
34. Chelan County Code, Section 14.98.1430: Place of public/private assembly: Per code definition, "Place of public/private assembly" means a building or space used in whole or in part for the gathering together of persons for such purposes as deliberation, entertainment, amusement, socializing, or awaiting transportation; such uses include, but are not limited to, meeting halls, clubhouses, grange, cinemas, theaters, and churches and religious facilities
35. Chelan County Code, Section 11.30.010: Commercial Agricultural Lands (AC). The proposed development is located in the AC zoning district of Chelan County. According to Chelan County Code Section 11.04.020 District Use Chart, wineries with greater than 1,500 sq.ft. of retail space require a Conditional Use Permit. In addition, "Places of Public and Private Assembly" also require a Conditional Use Permit.
36. Chelan County Code 11.30.020 Standards. All development in this zone shall meet the applicable provisions of the Chelan County Code, including without limitation the following:
- 36.1 Minimum lot size: ten acres, which measures to the centerline of adjoining public rights-of-way.
- 36.2 Minimum lot width: one hundred fifty feet at the front building line.
- 36.3 Maximum building height: thirty-five feet except as provided for in Section 11.88.170.
- 36.4 Maximum Lot Coverage. Buildings and structures shall not occupy more than thirty-five percent of the lot area.
- 36.5 Minimum Setback Distances. 25 ft. from front property line or 55 ft. from the street centerline, whichever is greater; 20 ft. from the rear property line; and 10 ft. from the side property line.



- 36.6 Setbacks from Agriculture. Does not apply to the proposed development.
- 36.7 The existing structures were reviewed at time of building permits for consistency with the required standards. Any new structures would need to meet all applicable setbacks.
- 36.8 Hearing Examiner Finding: No additional review is required at this time.
- 36.9 Off-street parking requirements shall be provided as prescribed in CCC Chapter 11.90.
- 36.9.1 Pursuant to COA #20 of CUPA 2021-336, the applicant shall provide a site plan to Chelan County Public Works showing the parking area, type of surface material, number of parking spaces, and general parking schematic.
- 36.9.2 Hearing Examiner Finding: As conditioned, this requirement would be met.
- 36.10 Landscape standards shall be provided as prescribed in Chapter 15.50 of Title 15, Development Standards, as amended.
- 36.10.1 The proposed development is exempt for landscaping requirement pursuant to CCC Section 15.50.020(2)(F) and (G) because the proposed development is less than twenty percent of the existing gross floor area and would require less than twenty parking spaces.
- 36.10.2 Hearing Examiner Finding: No landscaping is required for the proposed development. A landscaping plan was previously implemented during the development of CUP 2004-020.
- 36.11 All plats, short plats, development permits and building permits issued for development activities on, or within five hundred feet of, land designated as agricultural lands shall contain a notice that the subject property is within or near designated long-term commercial agricultural lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration.
- 36.11.1 Finding of Fact: The conditional use permit review recognizes potential conflicts between uses.
- 36.11.2 Hearing Examiner Finding: There are no potential conflicts between uses; the proposed development consists of expanding the current use as a winery and the closest residence is over 800 feet away from the winery.
- 36.12 Additional Public Notice Provisions. Upon receipt of an application for all plats, short plats, conditional use permits, variances and similar land use applications, the county shall provide notice of the application to adjacent property owners and all owners of property located within one thousand feet of the proposed subdivision or development per the provisions of CCC Section 14.08.050.
- 36.12.1 Notice was provided to properties within 1,000' of the subject boundary, excluding 60' of public right-of-way.
- 36.12.2 Hearing Examiner Finding: The additional noticing requirements have been met.
- 36.13 All applications related to the following types of land uses shall meet with the agricultural review committee (ARC) to review proposed projects, identify possible impacts, outline possible mitigation measures, and make a formal recommendation to Chelan County staff prior to rendering a decision on the application or setting a public hearing. ARC review and recommendation shall be based on the agricultural good neighbor practices adopted by the Chelan County board of county commissioners, CCC Chapter 10.30. All recommendations are for the consideration and final determination of the decision-making body.

- 36.13.1 A past Community Development Administrator issued a determination on October 27, 2014, that no review was required due to the fact that the ARC group has not been fully established.
- 36.13.2 Hearing Examiner Finding: This section of code does not apply.
37. Chelan County Code 11.93.040 Conditional use permit criteria. The development standards of this title shall be used by the applicant in preparing the conditional use permit application and by the Hearing Examiner in determining the acceptability of permitting a conditional use in a certain location. The applicant has the burden of proving that the proposed use meets the criteria set forth in this chapter. 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:
- 37.1 All criteria required for a specified use by this chapter can be satisfied.
- 37.1.1 The review for compliance is completed with this decision.
- 37.1.2 Hearing Examiner Finding: According to the submittal materials and subject to the conditions of approval, all criteria required for the proposed development have been or can be satisfied.
- 37.2 A finding can be made that the design standards of the zoning district within which the lot is located, critical area regulations, and all other applicable development standards and regulations can be met.
- 37.2.1 The site plan of record, date stamped October 17, 2023, demonstrates that the existing and proposed development would meet applicable development standards is CCC Section 11.30.020. A geologic assessment, prepared by Heath Geotechnical Services, was submitted with CUPA 2021-336 and the geologist determined that no recommendations were necessary for the proposed development. This geologic assessment has been adopted by reference for CUPA 2023-437.
- 37.2.2 Hearing Examiner Finding: Based on the site plan of record and submitted application materials, the proposed development meets the zoning standards, the critical area regulations, and all other applicable development standards.
- 37.3 Compatibility with the adjacent uses and the protection of the character of the surrounding area.
- 37.3.1 The adjacent land uses include agricultural and residential lands. Impacts to surrounding properties may result from traffic, noise, and light. However, the winery has been in operation for several years and the proposed development would not affect the current ambiance of the area.
- 37.3.2 Hearing Examiner Finding: The Hearing Examiner finds that the character of the surrounding area has not been significantly impacted by the existing use and the proposed development would not appear to increase that impact.
- 37.4 Detrimental impacts on the natural environment and productive use of surrounding natural resource lands can be mitigated or avoided.
- 37.4.1 The proposed development is located within the agricultural designated resource lands. The development design includes elements that are complementary and compatible with agri-tourism.
- 37.5 No conditional use permit shall be issued without a written finding that:



- 37.5.1 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.
  - 37.5.1.1 Pursuant to the agency comments, there is adequate water for fire flow, but the existing septic system may require upgrades. As a condition of approval, CDHD is requiring the applicant to demonstrate that the existing septic system has adequate capacity to provide services for the proposed development. A new septic permit may be required if the CDHD determines that expansion of the existing septic system is necessary.
  - 37.5.1.2 Hearing Examiner Finding: As conditioned, the proposed development would provide adequate service for water and septic.
- 37.5.2 No county facilities will be reduced below adopted levels of service as a result of the development.
  - 37.5.2.1 The subject property is accessed from Swartout Road. Chelan County Public Works has reviewed the proposal and no reduction of the adopted levels of service has been identified.
  - 37.5.2.2 Hearing Examiner Finding: As conditioned, the proposed development would be in compliance with the adopted levels of service.
- 37.5.3 The proposed use shall not result in undue adverse impacts affecting the public health, safety and welfare.
  - 37.5.3.1 Impacts to the surrounding properties and the public health, safety and welfare have been reviewed with this decision.
  - 37.5.3.2 Hearing Examiner Finding: As conditioned, the proposed development would not result in undue adverse impacts to the public health, safety and welfare.
- 37.5.4 A finding shall be made that adequate provisions have been provided for roads, ingress and egress, stormwater, parking and loading, domestic and irrigation water, sanitary facilities, power, fire protection, and other necessary facilities, improvements or services consistent with the requirements of Titles 11 and 15 of the Chelan County Code. Primitive or forest service roads may be considered appropriate access as provided in Section 11.88.070.
  - 37.5.4.1 As conditioned, the proposed development would provide adequate provisions for roads, ingress and egress, stormwater, parking and loading, domestic and irrigation water, sanitary facilities, power, fire protection, and other necessary facilities, improvements or services consistent with the requirements of Title 11 and Title 15 of the Chelan County Code.
- 37.5.5 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.
  - 37.5.1 Hearing Examiner Finding: As conditioned, 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.

- 37.5.6 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.
  - 37.5.6.1 Hearing Examiner Finding: As conditioned, the proposed development is consistent and compatible with the intent, goals and objectives and policies of the Comprehensive Plan, and any implementing regulation..
- 37.5.7 All conditions necessary to mitigate the impacts of the proposed use are conditions that are measurable and can be monitored and enforced.
  - 37.5.7.1 The Hearing Examiner may modify, add or remove conditions as necessary to ensure that all criteria are adequately addressed.
  - 37.5.7.2 Hearing Examiner Finding: Conditions of Approval are measurable and can be monitored and enforced.
- 38. CC Section 11.93.315 Places of public and private assembly. The following minimum conditions shall apply to places of public and private assembly:
  - 38.1 The applicant shall submit for review and approval an operation plan and vehicle/pedestrian circulation plan.
    - 38.1.1 The applicant has not provided a vehicle/pedestrian circulation plan. Chelan County Code Section 15.30.270(2)(c) provides the required standards for rural pedestrian facilities. Condition of Approval #9.1 for CUPA 2021-336 states that the applicant shall have a parking and circulation plan pursuant to CCC Section 11.93.330(3) prior to the commencement of the proposed use. Condition of Approval #20 for CUPA 2021-336 states that as part of this Parking and Circulation Plan, the applicant shall show the dimensions and type of material proposed for the guest parking area as well as the number of parking spaces, and general parking schematic for the proposed winery expansion. These Conditions of Approval remain in effect for CUPA 2023-437.
    - 38.1.2 Hearing Examiner Finding: As conditioned, the proposed development would meet this requirement.
  - 38.2 The use shall be landscaped per the requirements of CCC Chapter 15.50 and also comply with the parking provisions pursuant to CCC Chapter 11.90.
    - 38.2.1 The proposed development appears to be exempt from the landscaping requirement pursuant to CCC Section 15.50.020(2)(F) and (G) since the winery expansion is less than twenty percent of the existing gross floor area and would likely require less than twenty parking spaces. However, if the project requires more than 20 parking spaces, landscaping would be required for the parking area expansion.
    - 38.2.2 Hearing Examiner Finding: As conditioned, the proposed development would meet this requirement.
  - 38.3 The operation shall include adequate sanitary facilities based on proposed capacity.
    - 38.3.1 Finding of Fact: The applicant provided a copy of the Chelan-Douglas Health District approved septic system with the application materials for CUPA 21-336 and these have been adopted by reference. The current system appears to be



adequate for the existing winery and tasting room but has not been approved for the proposed development yet.

- 38.3.2 Hearing Examiner Finding: The applicant must obtain approval for the proposed development by submitting for the required commercial building permits.
- 38.4 The proposal will not reduce county facilities below adopted levels of service as a result of the development.
  - 38.4.1 As conditioned, the proposed development would not reduce county facilities below adopted levels of service.
  - 38.4.2 Hearing Examiner Finding: The proposed development would be in compliance with current adopted levels of service.
- 38.5 Administrative review of the operation to determine compliance with conditions of approval shall be performed in the first and fifth year of operation, or upon receipt of a written complaint:
  - 38.5.1 The review of conditional use permits helps ensure compliance with the requirements.
  - 38.5.2 Hearing Examiner Finding: The applicant shall submit a review letter to Chelan County in the first and fifth year of operation (after the date of decision).
- 38.6 All events and activities shall comply with Chapter 173-60 WAC, Noise.
  - 38.6.1 The applicant is required to meet the CCC Chapter 7.35 for noise controls.
  - 38.6.2 Hearing Examiner Finding: Noise shall be reviewed as part of the one- and five-year compliance review.
- 39. Chelan County Code Title 13: Stormwater.
  - 39.1 Hearing Examiner Finding: The proposed development is required to meet CCC Title 13, Stormwater.
- 40. Chelan County Code Title 15: Development Standards.
  - 40.1 Hearing Examiner Finding: Additional review shall be required after submittal of the proposed internal roads, trails, fire protections, and parking lot landscaping standards are submitted. The proposed development would be required to meet CCC Title 15, Development Standards, excepted as modified by this decision.
- 41. The subject property is designated as Commercial Agricultural Lands and as described, the proposed development would be consistent with the Chelan County Comprehensive Plan. As conditioned, the proposed development would be consistent with the criteria for the approval of a Conditional Use Permit pursuant to CCC Title 11. Environmental and critical area review has been completed, demonstrating that the proposed development does not have a probable significant adverse impact on critical areas.
- 42. An open record public hearing after due legal notice was held on January 17, 2024, via Zoom video conference.
- 43. Appearing and testifying was Karen Peele. Ms. Peele testified that she was the agent authorized to appear and testify on behalf of the applicant and property owner. Ms. Peele indicated that the new 200 sq.ft. structure would not be enclosed, but would just be a roof on poles. Regarding proposed Condition of Approval No. 10, she indicated Ryan Kelso had received approval for this in 2023. Regarding proposed Conditions of Approval 19 through 29, she indicated that these conditions

were redundant and included with prior decisions. She agreed that pursuant to her understanding, a restaurant is not allowed in this zoning district. Regarding proposed Condition of Approval No. 30.1, she indicated that they have received the report and the inspection. Regarding proposed Condition of Approval No. 30.3, she indicated that they have a letter from Chelan-Douglas Health District that water is available.

Also testifying for the Applicant was Bill Swaynes. Mr. Swaynes stated that he was the owner and the Applicant. He agreed that no restaurant would be on the premises and that a restaurant has not been allowed by this or any other prior permit for this property.

44. The following exhibits were admitted into the record:
  - 44.1 Ex A: Site Plans of Record dated October 17, 2023;
  - 44.2 Ex. B: Hearing Examiner Decision dated February 2005 for CUP 2004-020;
  - 44.3 Ex. C: Hearing Examiner Decision dated September 27, 2021 for CUPA 2021-336;
  - 44.4 Ex. D: Inadvertent Discovery Plan;
  - 44.5 Ex. E: Staff Report;
  - 44.6 Ex. F: Remainder of Planning Staff File.
45. No member of the public testified at the hearing.
46. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
47. 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 the site plan of record, the proposal meets applicable AC zoning regulations.
3. The proposal is consistent with the Chelan County Comprehensive Plan.
4. The proposed development, as conditioned, would not result in county facilities reduced below adopted levels of service.
5. The proposed development, as conditioned, would not have an adverse impact on public health, safety and welfare.
6. All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13, 14 and 15 of the Chelan County Code.
7. 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 could be avoided or mitigated as conditioned.
8. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

## III. DECISION

Based upon the above noted Findings and Fact and Conclusions, Conditional Use CUPA 23-437 is hereby **APPROVED**, subject to the following 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 Chelan County Code Section 11.93.080, the granting of a conditional use permit and the conditions set forth runs with the land, compliance with the conditions of the conditional use permit is the responsibility of the current owner of the property, whether that is the applicant or a successor.
2. All Conditions of Approval from the approved CUP 2004-020 decision approved by the Hearing Examiner on February 8, 2005 shall be in full force and effect unless modified by this decision.
3. All Conditions of Approval from the approved CUPA 2021-336 decision approved by the Hearing Examiner on September 27, 2021 shall be in full force and effect unless modified by this decision.
4. The applicant shall comply with all applicable local, state and federal regulations consistent with these conditions.
5. The applicant would be responsible for securing any and all state and federal agency permits and licenses as may be required.
6. The project shall proceed in conformance with the application and site plan of record on file with the Chelan County Planning Department except as modified herein.
7. Pursuant to CCC Section 11.93.040(10), this Conditional Use Permit Amendment shall be in conformance with the submitted application of record, including site plans date stamped October 17, 2023 or as amended by this decision.
8. Pursuant to the requirements of the International Building Code and International Fire Code, a Chelan County Commercial Building Permit shall be required for the proposed open-air pavilion, new deck, and new 200 sq.ft. building.
9. Pursuant to CCC Section 11.88.080, security lights or any exterior lighting shall be low-intensity, non-flashing and designed to project toward the property or shall be shielded to keep light from directly projecting over property lines.
10. Pursuant to CCC Section 11.93.030, a letter of compliance shall be submitted by the applicant to Chelan County Community Development prior to the commencement of the proposed use; this letter shall include the following:
  - 10.1. A parking and circulation plan approved by Chelan County Public Works pursuant to CCC Section 11.93.330(3).
11. Permitted activity shall be in conformance with all applicable local, state and federal regulations, statutes, rulings or requirements including, but not limited to the CCC Chapters 11.04 (District Use Chart), 11.30 (Commercial Agricultural Lands), 11.93 (Conditional Uses) and section 11.93.330 (Places of Public and Private Assembly).
  - 11.1. Pursuant to the definition of a Winery in CCC Section 14.98.2005, “... *may include as incidental and/or accessory to the principle use a tasting room, food and beverage service, places of public/private assembly, and/or retail sales area.*” **Restaurants are not an allowed use in the AC zoning district and the pizza oven/food sales approved under CUPA 21-336 shall not operate as a Restaurant as defined in CCC Section 14.98.1575.**

12. Pursuant to 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, and Chelan County Community Development.
13. Pursuant to CCC Section 11.93.070, in any case where a conditional use permit is granted under the terms of this title, no building or other permit shall be issued until after the end of the appeal period allowed in Title 14 of the Chelan County Code.
14. Pursuant to CCC Section 11.93.315(5), the applicant shall submit a compliance report to Community Development one year and five years after the date of this decision. The report shall include documentation regarding how each condition of approval is being met.
  - 14.1. Chelan County Community Development shall review the number of noise complaints, if any, to determine if the applicant shall be required to amend the type of noise (amplified or non-amplified), hours of operation or an increase buffering in order to reduce noise impacting the surrounding properties.
  - 14.2. Chelan County Community Development may require the applicant to provide a noise study as part of this review.
15. 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.
16. Pursuant to CCC Section 11.93.100, a change in use, expansion or contraction of site area, or alteration of structures or uses which are classified as conditional and are existing prior to the effective date of Resolution 2000-129, codified in this title, shall conform to all regulations pertaining to conditional uses.
17. Pursuant to CCC Section 11.93.110, this conditional use permit shall become void after three (3) years after approval or such other time period as established by the Hearing Examiner if the use is not completely developed. Said extension shall not exceed a total of six years and said phases and timelines shall be clearly spelled out in the application.
18. Pursuant to CCC Section 11.93.120, this action of the Hearing Examiner is final unless appealed pursuant to the judicial appeal provisions of Title 14 of the Chelan County Code.

**Chelan County Public Works (Comments from CUPA 2021-336). No comments were submitted for CUPA 2023-437.**

19. Pursuant to CCC Section 11.88.070(3); and Chapter 4, Sec. 6.14 of the Chelan County Transportation Element, the applicant shall dedicate additional right-of-way to make the right-of-way on Swartout Road and Klate Road 30' from centerline.
20. Pursuant to CCC Chapter 15.30, the applicant shall construct the Private Internal Access road to meet a Rural Emergency Vehicle Access Road (Standard Plan PW-22) with an Emergency Vehicle Turnaround (Standard Plan PW-23 A or B) within the proposed project.
21. 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 project. Prior to commencement of activities, the applicant shall provide Chelan County Public Works with a parking area, type of surface material proposed for the parking lot, number of parking spaces, and general parking schematic for the proposed project.
22. The applicant shall submit construction plans and reports in accordance with CCC Title 15. The plans must be submitted simultaneously under one Letter of Transmittal. The applicant shall



have the Construction Plans approved by Chelan County Public Works Department prior to construction. The following are the minimum construction plan elements: Road Improvement Plan (including location of utilities); Erosion and Sedimentation Control Plan; Lot Access Plan; Signage and Painting Plan; Drainage Report and Plan.

23. A Pre-Construction Meeting with the owner/contractor and Chelan County Public Works Department shall be required prior to commencement of construction.
24. The applicant shall submit signed As-built Construction Plans by the applicant's engineer prior to Chelan County Public Works issuing final approval.
25. Pursuant to CCC Section 12.08.020, the applicant shall demonstrate legal and perpetual access for the proposed Facility.
26. Pursuant to CCC Section 15.30.340 the applicant shall construct the access approach onto Swartout Road to meet the County's Industrial/ Commercial Driveway Approach (Standard Plat PW-26). The applicant shall obtain a Chelan County Approach Permit prior to constructing the Commercial Driveway Approach. The approach apron shall be required to be paved.
27. 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.
28. Pursuant to CCC Chapter 13.18, A Drainage Report & Plan shall be submitted to Chelan County Public Works if any new impervious surface of 5000 square feet is created and must be reviewed and approved. This shall be completed during the submittal of any building permits.
29. If a drainage system is required, or an existing drainage system is in place, this system shall be privately owned and maintained to its originally designed condition by all the property owners having a vested interest. A "Notice to Title" shall be filed with the Chelan County Auditor's office prior to the submittal of a Building Permit, stating:

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

### **Chelan-Douglas Health District**

30. Pursuant to the comment letter received from the Chelan County PUD on November 29, 2023.
  - 30.1. An evaluation of the existing septic system shall be required. A new septic system permit may be required to accommodate the increased septic effluent flow.
  - 30.2. A Food permit plan review shall be required.

- 30.3. Applicant shall submit verification of water availability either through submittal of a will serve letter or well log (private water review may be required).

**Chelan County PUD**

31. Pursuant to the comment letter received from the Chelan County PUD on November 29, 2023.
- 31.1. Electrical service is available at the subject property.
- 31.2. A Line Extension or Facility Modification may be necessary
- 31.3. Easements would be required for all primary power sited on the parcel or secondary power that crosses one or more parcels to serve another parcel.
- 31.4. Owner would need to apply for power with Chelan PUD if additional power is required.

**Department of Ecology (Comments from CUPA 2021-336). No comments were submitted for CUPA 2023-437**

32. The applicant may be required to obtain Winery General Permit (Permit) coverage from the Department of Ecology (Ecology) if wine, juice and/or wastewater production volumes surpass those quantified in Special Condition S1, Table 3 of the Permit. Ecology may also require Permit coverage if a facility is determined to be a “Significant Contributor of Pollutants or a Significant Industrial User” as defined in Appendix B of the Permit.

**Confederated Tribes of the Colville Reservation**

33. Requests that an Inadvertent Discovery Plan be prepared and submitted.

Dated this 19 day of January, 2024.

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.