

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, CONDITIONS OF
CUP 2023-326	)	APPROVAL AND DECISION
Gustafson	)	
	)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on February 7, 2024, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Conditions of Approval, and Decision as follows:

**I. FINDINGS OF FACT**

1. This was an application submitted for the permitting of an existing residence as a 2-bedroom/4-person Tier 2 Short Term Rental within the Commercial Agricultural Lands (AC) zoning district pursuant to the District Use Chart is Section 11.04.020 of the Chelan County Code. Access to the residence would continue to be off of Ivan Morse Road and domestic water/sanitation for the residence would continue to be from an existing shared well and existing septic system located on the subject property.
2. The Applicants/Owners are Manson 580 LLC, 1205 NE 88<sup>th</sup> St., Seattle, WA 98115.
3. The subject property is located at 580 Ivan Morse Road, Manson, WA 98831.
4. The abbreviated legal description and parcel number of the subject property is: PTN of NESE in S25, T28N, R21; 4.12 acres. Parcel No. 28-21-25-410-050.
5. The subject property is not located within an Urban Growth Area.
6. The property is located within the Commercial Agricultural Lands (AC) comprehensive plan designation and zoning district.
7. The subject property is currently used for residential. The applicant/property owner has an existing 1,465 sq.ft. house that was built in 1974 on the subject property and wants to use it as a short-term rental (STR). The only other structure that exists on the subject property is the detached garage and pole building that was built in 1974 as well.
8. The property to the north is Agricultural and residential uses and is zoned Commercial Agricultural Lands (AC) and Rural Residential/Resource 5 (RR5).
10. The property to the south is Agricultural and residential uses and is zoned Rural Residential/Resource 5 (RR5).
11. The property to the east is Agricultural and residential uses and is zoned Commercial Agricultural Lands (AC).
13. The property to the west is Agricultural uses and residential; Commercial Agricultural Lands (AC), Rural Residential/Resource 5 (RR5) and Commercial Mineral Lands (MC).
14. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped July 28, 2023. The proposed project does not require a vulnerability report, pursuant to CCC Chapter 11.82.

15. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does not contain any identified critical habitats. Therefore, the provisions of CCC Chapter 11.78 would not apply.
16. Pursuant to Natural Resources Stream Typing Maps, there are no streams on the subject property. Therefore, the provisions of CCC Chapter 11.78, would not apply.
17. Chelan County GIS mapping indicates that the subject property is located within a potential geologic hazard area for erosive soils. Therefore, the provisions of CCC Chapter 11.86 would apply. No new development would occur as a result of the proposed use, but any new structures built would require a geologic assessment to be submitted along with the building permit application.
18. Pursuant to the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, no wetlands are indicated to occur on or adjacent to the subject property. Therefore, the provisions of CCC Chapter 11.80 Wetland Areas Overlay District would not apply.
19. No comment was received indicating that the proposed development would be located within an area of high probability containing cultural resources.
20. Operation of the short-term rental is anticipated to commence upon approval of the Conditional Use Permit and subsequent STR permit.
21. The subject property is accessed off of Ivan Morse Road onto a private driveway.
22. Domestic water would continue to be supplied by an existing joint-use well that was documented in the application materials submitted for the CUP.
23. Power would continue to be by an extension of the Chelan County PUD.
24. Sanitation would continue to be provided by an existing on-site septic system that was permitted by the Chelan-Douglas Heath District as documented in the application materials submitted for the CUP.
25. The applicant must comply with CCC Chapter 7.35 Noise.
26. No new structures are proposed that could affect viewsheds of surrounding properties. As conditioned, the visual impact is anticipated to be minimal.
27. The Notice of Application was referred to surrounding property owners within 1,000 ft. (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on December 5, 2023, with comments due December 19, 2023. Agency comments are considered by the Hearing Examiner and, when appropriate, set as Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received:

Agencies Notified	Response Date	Nature of Comment
Chelan County Fire Marshal		
Chelan County Building Official		No Comment
Chelan Douglas Health District	December 6, 2023	Applicant needs to submit development review application with CDHD for STR proposal and also submit an onsite septic system inspection

Agencies Notified	Response Date	Nature of Comment
		report as well.
Chelan County Public Works		
Chelan County PUD		No Comment
WA Dept. of Archaeology and Historic Preservation		No Comment
Yakama Nation		No Comment
Confederated Tribes of Colville		No Comment
Chelan County Fire District No. 5	December 15, 2023	Fire extinguisher shall be mounted on a wall where it is conspicuously visible.
Lake Chelan Reclamation District		No Comment
Dept. of Ecology		No Comment

28. No public comments were received.
29. The application was submitted on July 28, 2023.
30. The Determination of Completeness was issued on November 22, 2023.
31. The Notice of Application was issued on December 5, 2023.
32. The Notice of Public Hearing was issued on January 27, 2024.
33. Chelan County Comprehensive Plan - The subject property has a Comprehensive Plan mapping designation of Commercial Agricultural Lands (AC). Therefore, the proposed use will be reviewed under the AC purpose and uses listed in the Resource Element of the Chelan County Comprehensive Plan. The purpose of the Commercial Agricultural Lands land use designation of the Resource Element is 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.” Uses appropriate for these areas include agriculture, open space, residential, and forestry. Additional uses may be considered with supplemental provisions, such as “...intensification of existing small scale recreational or tourist uses that rely upon a rural setting but that do not include a new residential component...”. The Hearing Examiner finds that the proposed use, as conditioned, is consistent with the goals and policies of the Resource Element within the Chelan County Comprehensive Plan.
34. Chelan County Code, Section 11.93.040: Conditional Use Permit Criteria. A conditional use permit may be approved only if all of the following review criteria and any special criteria listed in this chapter are met.
  - 34.1 All criteria required for a specific use by this chapter can be satisfied.
    - 34.1.1 Criteria for STRs have been addressed below.
    - 34.1.2 Based on review of the application materials submitted, the criteria for the proposed use can be satisfied.

- 34.2 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.
- 34.2.1 The subject property is located in the AC zoning district, which allows for Tier 2 STRs as a Conditional Use. The site plan of record, date-stamped July 28, 2023, demonstrates that the proposed use would meet applicable zoning setbacks identified in CCC Section 11.30.020. According to Chelan County GIS mapping, the only critical area existing on the property is the geological hazardous areas identified as having erosive soils. No new structures are proposed to be constructed as part of the proposed use; therefore, no impacts to critical area regulations would be anticipated.
- 34.2.2 Based on the application materials and the site plan of record, the proposed development would meet applicable zoning and critical areas regulations.
- 34.3. Compatibility with the adjacent uses and the protection of the character of the surrounding area.
- 34.3.1 The proposed use, which involves using an existing residence as a short-term rental, is targeting the residential characteristics of the surrounding area for commercial use. The proposed use is compatible with the agricultural and residential characteristics of adjacent properties due to these uses currently existing on the subject property.
- 34.3.2 As conditioned, the proposed use would be compatible with the character of the surrounding area.
- 34.4. Detrimental impacts on the natural environment and productive use of surrounding natural resource lands can be mitigated or avoided.
- 34.4.1 The subject property and several adjacent parcels are all identified as classified resource lands (agriculture) pursuant to the Chelan County Comprehensive Plan. The remaining properties are all classified as residential or agricultural use.
- 34.4.2 As conditioned, the proposed use would not be detrimental to the natural environment or the existing productive use of the surrounding agricultural operations.
- 34.5. No conditional use permit shall be issued without a written finding that: After adequate opportunity for review and comment, all providers of water, sewage disposal, schools, and fire/police protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
- 34.5.1 Chelan County provided a Notice of Application to all providers. Received comments are included in the file of record.
- 34.5.2 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.
- 34.6 The proposed use shall not result in undue adverse impacts affecting the public health, safety and welfare.
- 34.6.1 No agency comments were received indicating that the proposed use would adversely impact public health, safety, and welfare.

- 34.6.2 As conditioned, the proposed development would not result in an adverse impact on public health, safety and welfare.
- 34.7 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.
- 34.7.1 Finding of Fact:
- 34.7.1.1 Roads, ingress and egress: The subject property is accessed off of Ivan Morse Road, a county right-of-way, onto an existing private driveway that is used to travel to the existing residence that would be used for the STR.
  - 34.7.1.2 Stormwater: No new impervious surfaces would be constructed for the proposed use. The applicant shall comply with CCC Chapter 13.18 for stormwater drainage for any new structure on the subject property.
  - 34.7.1.3 Parking and Loading: Off-street parking must comply with the requirements of CCC Section 11.88.290(3)(C) regarding off-street automobile parking for the proposed use. The site plan of record, date-stamped July 28, 2023, and the application materials demonstrate that the applicant has provided the required four parking spaces for the four person STR.
  - 34.7.1.4 Domestic and Irrigation Water: Domestic water is provided by an existing shared well.
  - 34.7.1.5 Sanitary Facilities: The existing residence has an existing septic system that has a 3-bedroom capacity and has been previously permitted by the Chelan Douglas Health District.
  - 34.7.1.6 Power: Power is provided by Chelan County PUD.
  - 34.7.1.7 Fire Protection: The proposed development is located Chelan County Fire District #5. For the annual STR permit in Chelan County, the applicant would have to go through the annual fire, life, safety inspection.
- 34.7.2 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
- 34.8 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.
- 34.8.1 Finding of Fact:
- 34.8.1.1 Noise and Vibration: Noise is regulated by CCC Section 11.88.190 and CCC Chapter 7.35. No construction would occur for the proposed use.
  - 34.8.1.2 Light and Glare: Lights appurtenant to residential development are regulated by CCC Section 11.88.080.
  - 34.8.1.3 Heat, Steam, Odors, Smoke and Dust: The proposed use would not generate heat, steam or odors.

- 34.8.1.4 Erosion: Pursuant to CCC Chapter 11.86, the subject property does contain geologic hazards, but no construction would occur for the proposed use. Therefore, the provisions of CCC Chapter 11.86 Geologically Hazardous Areas Overlay District do not apply.
- 34.8.1.5 Water Quality: As conditioned, the proposed use would have to continue to meet standards as required by Chelan Douglas Health District and Department of Ecology.
- 34.8.1.6 Wastes and Physical Hazards: No hazards identified.
- 34.8.1.7 Electrical Disturbance: The proposal would not result in electrical disturbances.
- 34.8.2 Based on the above facts, noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties can be avoided or mitigated, as conditioned.
- 34.9 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.
  - 34.9.1 The proposed development would be consistent with the goals and policies of the Resource Element of the Comprehensive Plan.
  - 34.9.2 The project is consistent with the Chelan County Comprehensive Plan and Chelan County Code.
- 35. Chelan County Code, Section 11.93.450: Short Term Rentals - All short-term rental applications requiring a conditional use permit shall comply with and are subject to the provisions of this chapter in addition to Chapter [11.88](#). Chelan County Code, Section 11.88.290(3): Rental Standards Applicable to All Short-Term Rentals:
  - 35.1 Primary or Accessory Residence.
    - 35.1.1 The applicant is proposing to use the existing primary residence on the subject property as an STR.
    - 35.1.2 Based on review of the application materials submitted, this criterion would be satisfied. The applicant shall obtain an STR permit from Chelan County Community Development.
  - 35.2 Occupancy.
    - 35.2.1 The applicant is applying for a 4-person Tier II STR. The existing residence only contains 3 bedrooms, which allows for up to 6 occupants. The applicant does not live on site; therefore, a Tier II STR permit would need to be acquired for the proposed use. A Tier II STR permit in the AC zoning district requires the applicant to obtain a CUP pursuant to the District Use Chart in CCC Section 11.04.020.
    - 35.2.2 Based on review of the application materials submitted, this criterion would be satisfied. The applicant shall obtain a Tier II STR permit from Chelan County Community Development.
  - 35.3 Parking.

- 35.3.1 Pursuant to the site plan of record, date stamped July 28, 2023, the proposed use would have 2 designated parking spaces as required for a 4-person occupancy that meet all applicable setbacks and regulations.
- 35.3.2 Based on review of the application materials submitted, this criterion would be satisfied.
- 35.4 Garbage.
  - 35.4.1 Pursuant to the submitted application materials and the submitted STR application, trash containers are provided and would be handled by Zippy Disposal Services according to the submitted property management plan.
  - 35.4.2 Based on review of the application materials submitted, this criterion would be satisfied.
- 35.5 Noise.
  - 35.5.1 Pursuant to the submitted application materials and the submitted STR application, a copy of the Chelan County noise ordinances that describes the noise limitations for guests is in the submitted property management plan.
  - 35.5.2 Based on review of the application materials submitted, this criterion would be satisfied.
- 35.6 Trespass.
  - 35.6.1 Pursuant to the submitted application materials and the submitted STR application, a site plan was included with the property management plan that shows the extent of the subject property so that occupants know where the property boundaries are.
  - 35.6.2 Based on review of the application materials submitted, this criterion would be satisfied.
- 35.7 Signs.
  - 35.7.1 Pursuant to the submitted application materials and the submitted STR application, the address of the existing residence would be displayed so that it is clearly visible from the street or access road in compliance with CCC Section [10.20.520](#) requirements. As a condition of approval, the applicant shall display and maintain an additional sign outside identifying the property as short-term rental and displaying the Chelan County short-term rental registration number and central phone number required by the county.
  - 35.7.2 Based on review of the application materials submitted, as conditioned, this criterion would be satisfied.
- 35.8 Consumer Safety.
  - 35.8.1 Pursuant to the submitted application materials and the submitted STR application, the consumer safety requirements of RCW 64.37.030 are included in the property management plan.
  - 35.8.2 Based on review of the application materials submitted, this criterion would be satisfied.
- 35.9 Fire Safety and Outdoor Burning

- 35.9.1 Pursuant to the submitted application materials and the submitted STR application, a fire protection plan is included within the property management plan. As a condition of approval, the applicant shall also provide one 2A:10BC fire extinguisher, charged, maintained, and in serviceable condition within the common living space.
- 35.9.2 Based on review of the application materials submitted, as conditioned, this criterion would be satisfied.
- 35.10 Qualified Person.
  - 35.10.1 Pursuant to the submitted application materials and the submitted STR application, a qualified person has been identified within the property management plan.
  - 35.10.2 Based on review of the application materials submitted, this criterion would be satisfied.
- 35.11 Property Management Plan.
  - 35.11.1 Pursuant to the submitted application materials and the submitted STR application, a property management plan has been created for the guest occupants to reference.
  - 35.11.2 Based on review of the application materials submitted, this criterion would be satisfied.
- 35.12 Annual Permit Number.
  - 35.12.1 Upon obtaining an STR permit from Chelan County Community Development, an annual permit number will be assigned to the STR for advertising purposes.
  - 35.12.2 Based on review of the application materials submitted, this criterion would be satisfied.
- 35.13 Good Neighbor Guidelines.
  - 35.13.1 Pursuant to the submitted application materials and the submitted STR application, the good neighbor guidelines were submitted along with the property management plan.
  - 35.13.2 Based on review of the application materials submitted, this criterion would be satisfied.
- 35.14 Liability Insurance.
  - 35.14.1 Pursuant to the submitted application materials and the submitted STR application, the applicant demonstrated that the proposed STR is covered under the required liability insurance.
  - 35.14.2 Based on review of the application materials submitted, this criterion would be satisfied.
- 35.15 Taxes.
  - 35.15.1 Pursuant to the submitted application materials and the submitted STR application, the applicant demonstrated that the correct taxes have been paid and will continue to be paid as long as the proposed use exists.



- 35.15.2 Based on review of the application materials submitted, this criterion would be satisfied.
36. The applicant is proposing the use of the existing residence on the subject property as a Tier II STR. Pursuant to the rental standards applicable to all short-term rentals in CCC Section 11.88.290(3), all of the criterion can be satisfied either outright or through conditions of approval.
37. An open record public hearing after due legal notice was held using Zoom video conferencing on February 7, 2024.
38. The following exhibits were entered into the hearing and considered by the Hearing Examiner in rendering this decision:
- 38.1 Ex. A Site Plans of Record date stamped July 28, 2023;
- 38.2 Ex. B Conditional Use Permit Application Materials date stamped July 28, 2023;
- 38.3 Ex. C Remainder of Planning Staff File.
- 38.4 Ex. D Staff Report.
39. Appearing and testifying on behalf of the Applicant was Ron Gustafson. Mr. Gustafson, who appeared on the video conference that was being recorded on Zoom, could hear the proceedings but was not able to be heard. The Hearing Examiner did not place Mr. Gustafson under oath. He indicated, in writing, that he agreed with all the representations set forth within the staff report and had no objection to any of the proposed Conditions of Approval. He also reaffirmed this by nodding his head when questioned by the Hearing Examiner. Because this hearing was video recorded, the Hearing Examiner believed that this testimony from Mr. Gustafson was sufficient. Mr. Gustafson indicated that he had nothing further to say about this application.
40. Testifying from the public was Matthew Warmack. Mr. Warmack testified in favor of the application, indicating that he believes the County needs more short-term rentals.
41. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
42. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## II. CONCLUSIONS OF LAW

1. The Hearing Examiner has authority to render this Decision.
2. The proposed application as conditioned complies with the Revised Code of Washington.
3. The proposed application as conditioned complies with the Washington Administrative Code.
4. The proposed application as conditioned complies with the Chelan County Comprehensive Plan.
5. The proposed application as conditioned complies with the Chelan County Code.
6. The proposed use is residential in nature.
7. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

### III. CONDITIONS OF APPROVAL

All conditions imposed by this decision shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.

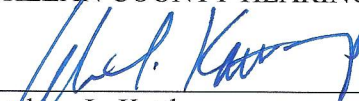
1. Pursuant to CCC Section 11.93.080, the granting of a conditional use permit and the conditions set forth runs with the land; compliance with the conditional use permit is the responsibility of the current owner of the property, whether that is the applicant or a successor.
2. Pursuant to CCC Section 11.93.040(10), the final Conditional Use Permit shall be in conformance with the submitted application of record, including site plans date stamped July 28, 2023 or as amended by this decision.
3. Pursuant to CCC Section 11.88.290, a short-term rental permit shall be obtained from Chelan County Community Development.
  - 3.1 Pursuant to CCC Section 11.88.290(3)(f), the applicant shall update the Property Management Plan to show the boundaries of the property and notify guests that no trespass onto neighboring orchards will be tolerated.
  - 3.2 Pursuant to CCC Section 11.88.290(3)(g), the applicant shall display and maintain an additional sign outside identifying the property as short-term rental and displaying the Chelan County short-term rental registration number and central phone number required by the county.
  - 3.3 Pursuant to CCC Section 11.88.290(3)(i), the applicant shall also provide one 2A:10BC fire extinguisher, charged, maintained, and in serviceable condition within the common living space.
4. Pursuant to Chelan County Code 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.
5. 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.
6. 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.

### IV. DECISION

Based upon the above noted Findings and Fact and Conclusions, CUP 2023-326 is hereby **APPROVED**.

Dated this 9 day of February, 2024.

CHELAN COUNTY HEARING EXAMINER



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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.