

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF

CUP 2019-010

Winton Compost Facility

RECEIVED

OCT 21 2019

CHELAN COUNTY

COMMUNITY DEVELOPMENT

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND CONDITIONS
OF APPROVAL

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on October 16, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

FINDINGS OF FACT

1. An application was submitted for a Conditional Use Permit to install and operate a compost facility and compost pellet manufacturing facility. The facility will operate on the existing site of the former Winton lumber mill and will utilize existing developed area and structures whenever possible. The property is approximately 83.57 acres in the Rural Industrial (RI) zoning district. The project plans to add a portable trailer for offices, a covered tipping, mixing, and grinding building, and pellet storage silos. All leachate and stormwater will be kept separate and leachate will be used for the composting process or removed to a WWTP for disposal. Primary access is from Winton Road, potable water is provided by an on-site well, septic was approved by the Chelan-Douglas Health District.
2. The owner is Hampton Drying Company, 9600 SW Barnes RD STE 200, Portland, OR 97225.
3. The agent/applicant is Thad Schutt, Winton Manufacturing LLC, 1251 White Bluffs Street, Richland, WA 99352.
4. The subject property is located at 17400 Winton Rd., Leavenworth, WA 98826.
5. The parcel numbers for the subject properties are 26-17-20-420-050, 26-17-20-130-000, 26-17-20-935-010.
6. Legal Description for the subject properties are Lot 4 Block 1 and Lots 1 to 9 Block 2 Winton Place; A portion of SE 1/4 and a portion of the NE 1/4 of Section 20, Township 26 N. Range 17 E. Approximately 83.57 acres.
7. The subject property is outside of an Urban Growth Area.
8. The Comprehensive Plan designation and Zoning designation for the subject site is Rural Industrial (RI).
9. These lots have historically been used as a lumber mill. More recently, the main structure has been used to manufacture timber and steel mats used in the oil industry. The following permits have been issued and actions taken:
 - 9.1.1 BP 820559 – Storage shop.
 - 9.1.2 BP 840735 – Chipper house.
 - 9.1.3 BP 840737 – Mobile office.

- 9.1.4 BP 840795 – Equipment facility.
 - 9.1.5 BP 900655 – Mill building.
 - 9.1.6 BP 940392 – Water storage tank.
 - 9.1.7 BP 950216 – New 1620 sq. ft. maintenance shop (36 x 45).
 - 9.1.8 BP 950492 – Erect steel building, cooling shed for lumber – rebuild and repair to existing.
 - 9.1.9 BP 950864 – Planner mill building addition to existing sawmill building.
 - 9.1.10 BP 960561 – 40' X 72' Addition to replace portion of existing sawmill building.
 - 9.1.11 BP 970376 – 14000 sq. ft. addition to existing sawmill.
 - 9.1.12 BP 000760 – Evaporator building and concrete work.
 - 9.1.13 BP 000759 – Boiler building and concrete work.
 - 9.1.14 BP 000861 – Oil tank foundation.
 - 9.1.15 BP 010369 – Office addition and modification to existing manufacturing home office.
 - 9.1.16 BP 030646 – Interior remodel – Building a tool/storage area in basement of sawmill.
 - 9.1.17 BP 030645 – Roof over diesel tank at package boiler.
 - 9.1.18 BP 040083 – Install lumber transfer table/log infeed table to new saw.
 - 9.1.19 BP 040609 – Cinder block commercial building for 2 air compressors.
 - 9.1.20 FM-SPRINKLER 040695 – Fire sprinkler plan review.
 - 9.1.21 PRE-APP 19-026 – Compost Facility.
10. The developed portion of the parcels where the facility will be located is generally flat, sloping to the north. Individual pads typically slope less than 3% to a drain. Surrounding areas rise much more steeply away from the site to the surrounding hills.
 11. The subject property is in RI zoning. The surrounding properties are used as residential and commercial forestry. The BNSF Railway Company owns an easement along the eastern portion of the site.
 12. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped July 18, 2019. The proposed project does not require a vulnerability report, pursuant to Chelan County Code Chapter 11.82.
 13. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does contain identified Northern goshawk and riparian zones. Therefore the provisions of Chelan County Code Chapter 11.78 apply.
 14. Pursuant to the Federal Emergency Management Agency (FEMA), panel number 5300150775B of the FIRM maps, the project area is located outside of the special flood hazard area. Therefore, the provisions of Chelan County Code Chapter 11.84, Frequently Flooded Areas Overlay District and Chelan County Code Chapter 3.20, Flood Hazard Development, do not apply.

15. According to the Washington State Department of Natural Resources Stream Layer Map, there are streams identified on site.
16. Chelan County GIS map layer indicates that the subject property is located within a potential geologic hazard area. Therefore, the provisions of CCC, Chapter 11.86 apply to the project.
17. A copy of the geological site assessment performed by Landau Associates was submitted on August 13, 2019.
18. Pursuant to the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, no wetlands are indicated on or adjacent to the subject property; therefore, the provisions of Chelan County Code Chapter 11.80 Wetland Areas Overlay District do not apply.
19. There are no known cultural resource sites on the subject property. Pursuant to Revised Code of Washington (RCW) 27.53.020, if cultural resources are found, the applicant will be required to stop work and contact the Department of Archaeology and Historic Preservation, the Confederated Tribes, and Chelan County Community Development.
20. The Applicant plans to begin construction upon approval of application.
21. The subject property fronts and accesses from Winton Mill Road, a public county right-of-way.
22. Water is provided via a private well.
23. Chelan County PUD provides electrical services to the subject site.
24. Sanitation is provided by an existing on-site septic.
25. Noise should be similar to other industrial uses. Trucks, loaders, and excavators would operate during the proposed business hours of 7am-5pm, however trucks may deliver to the facility 24 hours a day. Tipping would occur inside a structure. Mufflers would be maintained on all vehicles and engines.
 - 25.1 The applicant must comply with Chelan County Code Chapter 7.35 Noise.
26. The use of the property is not changing from rural industrial. The surrounding properties would not be subjected to unknown impacts.
27. The Notice of Application was referred to surrounding property owners within 300 feet (excluding 60 feet of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on August 16, 2019 with comments due August 30, 2019. The following agencies provided comments:
 - 27.1 Chelan County Fire Marshal responded on August 30, 2019
 - 27.2 Chelan County Building Official responded on August 28, 2019
 - 27.3 Chelan County Public Works responded on August 29, 2019
 - 27.4 Chelan Douglas Health District responded on September 4, 2019
 - 27.5 Chelan County Public Utility District responded on August 28, 2019
 - 27.6 Department of Ecology responded on August 27, 2019
 - 27.7 Fire District 9 responded on August 17, 2019
 - 27.8 City of Leavenworth responded on September 3, 2019
28. The following agencies were notified but did not respond:
 - 28.1 Chelan County Assessor
 - 28.2 WA Department of Transportation
 - 28.3 Cascade School District

- 28.4 WA Department of Archaeology and Historic Preservation
 - 28.5 Yakama Nation
 - 28.6 Confederated Tribes of Colville
 - 28.7 Chelan County Noxious Weed Board
 - 28.8 SEPA Register
29. Public comments from the following individuals have been received:
- 29.1 Jim Feiten responded on August 16, 2019
 - 29.2 Vito Fedor responded on August 19, 2019
 - 29.3 Rob Whitten responded on August 19, 2019 and August 30, 2019
 - 29.4 William Thompson responded on August 20, 2019
30. The application materials were submitted on July 18, 2019.
31. A Determination of Completeness was issued on August 13 2019.
32. The Notice of Application was provided on August 16, 2019.
33. The Notice of Public Hearing was provided on October 4, 2019.
34. Pursuant to WAC 197-11 and RCW 43.21C of the State Environmental Policy Act (SEPA), environmental review and a threshold determination was completed by Chelan County (lead agency) and a Determination of Non-Significance (DNS) was issued on September 27, 2019. The SEPA Checklist and DNS are included within the file of record and adopted by reference.
35. Uses appropriate for the Rural Industrial (RI) zoning district, identified in the Comprehensive Plan, include industrial facilities and services, intensification of development on lots containing isolated nonresidential uses, agriculture, forestry, caretaker residence for industrial facilities, and natural resource support facilities and services. The purpose is to recognize the need for rural industrial and resource based industrial activities within the rural areas. This designation will provide the opportunity for the development, redevelopment and infill of existing rural industrial developments or former industrial sites consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan.
36. The project is consistent with Chelan County Code Section 11.93.040 (1) in the following respects:
- 36.1 Criteria for an inert waste site have been addressed in this decision.
 - 36.2 Based on review of the application materials submitted, the general criteria for a CUP could be satisfied.
37. The project is consistent with CCC Section 11.93.040 (2) in the following respects:
- 37.1 The proposed development is located in the Rural Industrial (RI) zoning district. The RI zoning district permits inert waste sites as Conditional Uses.
 - 37.2 Based on the site plan of record, the proposed project meets applicable zoning and critical areas regulations.
38. The project is consistent with CCC Section 11.93.040 (3) in the following respects:
- 38.1 The subject property has been operated as an industrial site for over 30 years. Surrounding properties include working forests and residences.
 - 38.2 The proposed use of the property is not materially changing the existing use.

39. The project is consistent with CCC Section 11.93.040 (4) in the following respects:
 - 39.1 The proposed development of the compost facility would not be detrimental to the natural environment or surrounding properties.
 - 39.2 The proposed development would not be detrimental to the surrounding resource land as it does not impede their use or development.
40. The project is consistent with CCC Section 11.93.040 (5)(a) in the following respects:
 - 40.1 Chelan County provided a Notice of Application to all providers. Received comments are included in the file of record.
 - 40.2 Through the process of public and agency noticing, opportunity for review and comments were provided for the proposed development. Staff recommended conditions of approval as appropriate.
41. The project is consistent with CCC Section 11.93.040 (5)(b) in the following respects:
 - 41.1 The proposed development, as conditioned, would not result in county facilities reduced below adopted levels of service.
42. The project is consistent with CCC Section 11.93.040 (6) in the following respects:
 - 42.1 The proposed development, as conditioned, would not have an adverse impact on public health, safety and welfare.
43. The project is consistent with CCC Section 11.93.040 (7) in the following respects:
 - 43.1 Roads, ingress and egress: The subject property fronts off of Winton Road and accesses off Winton Mill Road, public county right-of-ways.
 - 43.2 Stormwater: The applicant shall comply with CCC, Title 13; Chelan County Stormwater Guidelines and Procedure.
 - 43.3 Parking and Loading: CCC, Section 11.90.050, requires 3 off-street loading berths; as conditioned the minimum loading requirement would be met. CCC, Section 11.90.060, requires 1 space per employee at peak shift and 1 space per 300 square feet office space. 42 parking spaces are shown on the site plan of record date stamped August 13 2019. 10 peak employees of Winton Manufacturing, 15 peak employees U.S. Mats (current tenants of the building), 4,413 sq. ft. of office space. As conditioned the minimum parking requirement would be met.
 - 43.4 Domestic and Irrigation Water: The proposal is supplied with water via two private wells.
 - 43.5 Sanitary Facilities: An existing on-site septic system would provide septic facilities for the development.
 - 43.6 Power: Power is provided by Chelan County PUD.
 - 43.7 Fire Protection: Fire protection is provided by Chelan County Fire District 9.
 - 43.8 All necessary facilities, improvements and services are consistent or conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
44. The project is consistent with CCC Section 11.93.040 (8) in the following respects:
 - 44.1 Noise and Vibration: Noise and vibration will be on-going throughout the duration of the development in a manner consistent with industrial uses. Noise control is regulated by CCC, Chapter 7.35. Additional, noise and vibration will be temporary during construction of the

- improvements. Construction noise is regulated by CCC, Section 11.88.190 and CCC, Chapter 7.35.
- 44.2 Light and Glare: Lights appurtenant to industrial development are regulated by CCC, Section 11.88.080.
- 44.3 Erosion: The subject property is located within a geologically hazardous area for erosive soils; a geological site assessment performed by Landau Associates was submitted on August 13, 2019. The proposed development would need to comply with the requirements of this assessment.
- 44.4 Heat, Steam, Odors, Smoke and Dust: As conditioned, the proposed development would not impact adjacent properties or the vicinity with heat, steam or odors.
- 44.5 Water Quality: As conditioned, the proposed development would not impact the water quality of adjacent properties or the vicinity.
- 44.6 Wastes and Physical Hazards: As conditioned, the proposed development would not impact adjacent properties or the vicinity with wastes or physical hazards.
- 44.7 Electrical Disturbance: As conditioned, the proposed development would not impact adjacent properties or the vicinity with electrical disturbances.
- 44.8 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.
45. The project is consistent with CCC Section 11.93.040 (9) in the following respects:
- 45.1 The proposed inert waste site is consistent with the goals and policies of the Rural Element Goals and Policies of the Comprehensive Plan.
- 45.2 The project is consistent with the Chelan County Comprehensive Plan.
46. The project is consistent with CCC Section 11.93.040 (10) in the following respects:
- 46.1 Proposed conditions are Chelan County Code requirements. Failure to comply with the conditions may result in the inability to obtain building permit(s) and/or may result in code violations subject to Title 16.
- 46.2 Proposed conditions are measureable and can be enforced.
47. Staff reviewed the applications and submitted materials. Based on the information contained in the applications and compliance with the Revised Code of Washington, the Washington Administrative Code, Chelan County Comprehensive Plan, and the Chelan County Code, staff recommended APPROVAL subject to recommended conditions of approval.
48. An open record public hearing after due legal notice was held on October 16th, 2019.
49. At this open record hearing, the entire planning staff file was admitted into the hearing record.
50. Appearing and testifying on behalf of the applicant was Thad Schutt. Mr. Schutt testified that he was an agent authorized to appear and speak on behalf of the applicants and property owners. Mr. Schutt indicated that all the proposed conditions of approval were acceptable. Mr. Schutt indicated that the applicant would not object to an additional condition setting a review period.
51. Testifying from the public were the following individuals:

51.1 Jim Feiten. Mr. Feiten testified that his residence is approximately 200' from the property boundary line and 350' from the proposed composting site. His obvious concerns were to potential smells and noise from the site. He specifically mentioned that the grinding can create significant loud noises and if allowed at all times of the day, this would be disruptive to his residence.

51.2 Bill Thompson. Mr. Thompson testified about his prior experience about the prior occupants of the property. He indicated that he owns land on three sides of the subject property. He has been trying to sell but has not been able to. He indicated that he just wants the current owners to be good neighbors so that all property and interest can be met.

52. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.

53. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSIONS OF LAW

1. The Hearing Examiner has authority to render this Decision.
2. Referral agency comments were received and considered in the review of this proposal.
3. The site of the subject proposal is in the Rural Industrial land use designation. As described, the proposal is consistent with the Chelan County Comprehensive Plan.
4. As conditioned, the subject proposal is consistent with the Chelan County Code, Title 11.
5. Environmental and Critical Areas review has been completed. As conditioned, the proposal does not have negative impacts on critical areas which cannot be mitigated.
6. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions, Conditional Use CUP 2019-010 is hereby **APPROVED**.

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 11.93.070, 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.
2. 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 conditional use permit is the responsibility of the current owner of the property, whether that is the applicant or a successor.

3. Pursuant to RCW 27.53.020, if the applicant or their agents discover previously unknown historic or archaeological remains/artifacts while conducting the development activities authorized by this application, the applicant/ agent 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. If any Native American grave sites or archaeological resources are discovered or excavated, work must stop immediately.
4. Pursuant to WAC 173-350-220, contaminants such as dust, nuisance odors, and other contaminants must not migrate beyond property boundaries
5. Pursuant to Chelan County Code 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 the requirements of the International Building Code and International Fire Code, as amended, a Chelan County Commercial Building Permit is required for the proposed ~6,400 sq. ft. Tipping/Mixing/Grinding Building, ~400 sq. ft. Office Trailer, Drying Silos, and any other structures that may require a permit for construction.
7. Pursuant to Chelan County Code Section 11.86.020, all development must comply with the geological site assessment performed by Landau Associates, submitted on August 13, 2019.
8. Pursuant to Chelan County Code Section 11.93.040(10), the final Conditional Use Permit shall be in conformance with the submitted application of record, date stamped July 18, 2019.
9. 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.
10. 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.
11. Pursuant to Chelan County Code Section 11.88.080, any exterior lighting shall be low-intensity, nonflashing and designed to project toward the property or shall be shielded to keep light from directly projecting over property lines.
12. Pursuant to Chelan County Code Section 11.90.060, the applicant must meet the off street parking standards for manufacturing, assembly, freight terminal, wholesale, packing, storage, warehouse prior to commencing operations.
13. Pursuant to Chelan County Code Section 11.90.060, the applicant must ensure that noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, and physical hazards do not impact adjacent properties.
14. Pursuant to RCW 27.53.060, and CCSMP Section 27, 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.
 - a. An inadvertent discovery plan must be submitted with the building permit application and kept onsite during all land disturbing activities.

15. The subject property and conditional use permit shall conform to the comments and conditions of approval as found in the Chelan County Public Works Agency Comment response dated August 28, 2019 (Exhibit A).
16. The subject property and conditional use permit shall conform to the comments and conditions of approval as found in the Chelan County Fire Marshal Agency Comment response dated August 30, 2019 (Exhibit A).
17. The subject property and conditional use permit shall conform to the comments and conditions of approval as found in the Chelan Douglas Health District Agency Comment response dated August 17, 2019 (Exhibit A).
18. The subject property and conditional use permit shall conform to the comments and conditions of approval as found in the Washington State Department of Ecology Agency Comment response dated August 27, 2019 (Exhibit A).
19. Pursuant to Chelan County Code 11.93.030, no grinding activities may take place between the hours of 6:00 p.m. through 7:00 a.m., seven days a week.
20. Pursuant to Chelan County Code 11.93.030, this permit is subject to a review by staff after the first year of operation and after the third year of operation and at any time in the future when complaints warrant further review. During this review process, staff will determine whether facts and circumstances exist that, in staff's sole opinion, requires this matter to be returned to the Hearing Examiner for a re-evaluation of the conditions of approval, and their ability to mitigate noise, smells, traffic, and any other adverse consequences of the use.

Approved this 21st day of October, 2019.

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