

BEFORE THE CHELAN COUNTY HEARINGS EXAMINER

IN THE MATTER OF	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
CUP 2012-144	)	DECISION AND CONDITIONS
Pioneer Water Users Association	)	OF APPROVAL
	)	

THIS MATTER, having come on for hearing in front of the Chelan County Hearing Examiner on September 19, 2012, 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. This is an application to construct an irrigation pump station with intake/fish screen.
2. The proposed pump station was reviewed for shoreline compliance through the shoreline exemption and wetland variance file numbers: SE 2012-003, WV 2012-004 and WV 2012-112. The shoreline applications were approved by Hearing Examiner's decision dated July 3, 2012.
3. The applicant and owner is Dan Jaspers, Pioneer Water Users Association, 2817 School Street, Wenatchee, WA 98801.



9. Shoreline Overlay District: Shoreline Master Program. The proposed development is within the Rural shoreline environmental classification.
10. The project area is open ditch with natural vegetation and built irrigation structures.
11. The project area is associated with the Gunn Ditch irrigation right-of-way which terminates at the intersection of State Highway 285 within the City of Wenatchee's Urban Growth Area.
12. The property to the north of the subject property is residential; zoned Residential Single-Family (RS).
13. The property to the south of the subject property is Wenatchee River.
14. The property to the east of the subject property is Highway SR 285.
15. The property to west of the subject property is residential and vacant; zoned Residential Single-Family (RS).
16. The applicant submitted an Aquifer Recharge Disclosure Form, date stamped March July 12, 2012; the proposed development does not require a vulnerability report, pursuant to Chelan County Code Section 11.82.
17. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat and Species data, the subject site is associated with Mule Deer habitat and a riparian buffer associated with the Wenatchee River; therefore, the development is subject to Chelan County Code Chapter 11.78.
18. Pursuant to Federal Emergency Management Agency, FIRM map panel 5300150625C, the subject site contains 100-year flood plain along the shoreline of Wenatchee River; therefore, the development is subject to Chelan County Code Chapter 11.84.
19. The subject site contains Burch Fine Sandy Loam, with 8 to 15% slopes and Terrace Escarpments.
20. A review of the contours map shows that the subject site contains slopes greater than 40%; therefore, the proposed development is subject to Chelan County Code Chapter 11.86.
21. The applicant has submitted two Wetland Delineation and Classification Reports. One dated, June 2011, addresses the overall Gunn Ditch and dam. The second dated, January 17, 2012, addresses the proposed dam removal site and the proposed intake site. The proposed dam removal and pump station are within wetlands and associated buffer areas.
22. The applicant has received a wetland variance, file number 2012-112, to complete the proposed pump station and associated infrastructures within the wetland buffer.



23. Stream buffers are regulated under Chelan County Code Chapter 11.78 Fish & Wildlife Overlay District. The proposed project meets the exemption criteria of Chelan County Code Section 11.78.020(16).
24. The applicant has applied for and received conditional approval of a Shoreline Exemption for completion of the proposed pump station and all associated infrastructures.
25. Chelan County Code Chapter 11.78, Fish and Wildlife Conservation Areas Overlay District (FWOD), regulates development within known habitat areas. Chelan County Code Section 11.78.020 provides a list of items exempt from the overlay district requirements. It requires that "all exempted activities shall use all reasonable methods to avoid potential impacts to critical areas. Any substantial damage to a critical area that is not a necessary outcome of the exempted activity shall be restored. Best management practices regarding clearing and grading may be obtained from Chelan County and the Chelan County Conservation District."
26. Exempted developments include: (2) the maintenance or construction of pumping stations and irrigation facilities.
27. Pursuant to 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.
28. The subject site is accessed from Lower Chatham Hill Road and a private access easement on private land. The site may also be accessed by the Gunn Ditch right-of-way.
29. Chelan County Public Utility District No. 1 provides electrical service to the subject site.
30. Water: Does not apply to this application.
31. Sanitation: Does not apply to this application.
32. The proposed development is within the Wenatchee Watershed Management Plan and stormwater regulations pursuant to Chelan County Code Title 13.
33. Fire protection: Does not apply to this application.
34. Temporary construction noise and on-going operation of the proposed pump station will result in noise. The noise from the pump station is mitigated by the conditions of approval.
35. The proposed pump station is located at a lower level of elevation than the surrounding properties and land uses.
36. The Notice of Application and environmental review was referred to jurisdictional agencies, adjacent property owners and departments of the County on August 14, 2012. Property owners were notified within 300 feet of the project boundary excluding 180 feet of public right-of-way. Comments were due on August 28, 2012. Agency comments are addressed, as appropriate, in the form of recommended Conditions of Approval for the proposal. The following agencies and County departments provided comments:



- 36.1 Chelan County Public Works responded on August 29, 2012
  - 36.2 Chelan County PUD No 1 responded on August 16, 2012
  - 36.3 City of Wenatchee responded on August 27, 2012
37. The following agencies were notified but did not respond:
- 37.1 Chelan County Fire Marshal
  - 37.2 Department of Ecology
  - 37.3 Department of Fish and Wildlife
  - 37.4 Department of Natural Resources
38. No public comments were received.
39. The County issued a SEPA Addendum, dated September 6, 2012, amending the Determination of Non-significance, issued June 11, 2012 for SE 2012-003 and WV 2012-004, to include Wetland Variance, file number WV 2012-112, and Conditional Use Permit, file number CUP 2012-144. No change in the project description, location or impact was determined. The Notice of Application comment period included an optional DNS notification.
40. The application materials were submitted on July 12, 2012.
41. A Determination of Completeness was issued on July 26, 2012.
42. The applicant has submitted an Affidavit of Posting which shows the property was posted from August 14, 2012 to August 28, 2012.
43. Notice of public hearing was provided September 7, 2012.
44. The project is consistent with Wenatchee's Comprehensive Plan in the following respects:
- 44.1 The applicant is requesting modification of the existing irrigation system to improve function and water quality/flow for the Wenatchee River.
  - 44.2 The application is consistent with the Chelan County and City of Wenatchee's Comprehensive Plans.
45. The project is consistent with City of Wenatchee Zoning Code 10.46 in the following respects:
- 45.1 The site plan of record, date stamped March 13, 2012, shows the proposed pump station on parcel number 23-20-28-240-500. Pursuant to the site plan of record, date stamped July 12, 2012, the development will be eighteen feet (18') from the rear yard setback impacting the southern property, parcel number 23-20-28-240-505, also included in this application. The remaining provisions of Wenatchee City Code 10.46 are met by this project. Staff has determined that for this particular project, a variance for the rear yard setback is not required.



- 45.2 The primary use of the property is the irrigation system and infrastructure.
  - 45.3 WCC 10.46.020B(2)(d), states "accessory structures, no greater than twenty (20) feet in height, may observe a three-foot setback in the rear yard areas; provided that no projections (eaves, etc.) are within three feet of a property line and that no combination of structures extends more than 50 percent of the horizontal distance of the rear property line."
  - 45.4 The proposed development qualifies as an accessory structure exempt from the required rear yard setback, pursuant to WCC 10.46.020(B)(2)(d).
46. The project is consistent with City of Wenatchee Code Section 10.65.030 in the following respects:
- 46.1 The proposed pump station was reviewed for shoreline compliance through the shoreline exemption and wetland variance file numbers: SE 2012-003, WV 2012-004 and WV 2012-112. The shoreline applications were approved by Hearing Examiner's decision dated July 3, 2012.
  - 46.2 The applicant has submitted a Landscape Plan, date stamped July 12, 2012.
  - 46.3 Based on the site plan of record, date stamped, March 13, 2012, the proposed project is within approximately eleven feet (11') from the rear yard setback for parcel 23-20-28-240-500 impacting the southern property, parcel number 23-20-28-240-505.
  - 46.4 The City of Wenatchee Zoning Code Section 10.46.020B(2)(d), states, "accessory structures, no greater than twenty (20) feet in height, may observe a three-foot setback in the rear yard areas; provided that no projections (eaves, etc.) are within three feet of a property line and that no combination of structures extends more than 50 percent of the horizontal distance of the rear property line."
  - 46.5 The proposed development is on private lands and within the Gunn Ditch right-of-way.
  - 46.6 The existing conditions of approval based on Hearing Examiner and the proposed landscape plan provide adequate environmental protection, site restoration and landscaping for the proposed development.
  - 46.7 The proposed accessory structure meets the exemption for reduced rear yard setback pursuant to WCC 10.46.020B(2)(d).
  - 46.8 There are no safety issues identified as part of the proposed development or its on-going operations and maintenance.
- 47 The project is consistent with City of Wenatchee Code Section 10.65.050 in the following respects:



- 47.1 The proposed development is an irrigation facility service providing water for agricultural and residential uses. The applicant proposes to proceed with project development upon completion of all required permits, expected within the 2012 calendar year. The proposed pump station is part of a larger development. The location is defined within the application materials.
- 47.2 The conditional use permit is recommended as a condition of approval to run with the land to ensure on-going service of irrigation water regardless of ownership. As a recommended condition of approval, the applicant will have one year to act on any approval and the approval shall apply only to the lands identified in the application materials.
48. The project is consistent with City of Wenatchee Code Section 10.65.060 in the following respects:
- 48.1 All requirements of a specified use can be satisfied because:
- 48.1.1 The staff report reviews all requirements of a specified use, proposed pump station, and incorporates the Hearing Examiner's decision dated July 3, 2012, on related shoreline exemption and wetland variance applications, file numbers SE 2012-003, WV 2012-004 and WV 2012-112.
- 48.1.2 The conditional use permit is to review impacts of the proposed pump station within the Residential Single-Family (RS) zoning district.
- 48.1.3 As conditioned, the proposed pump station can satisfy the requirements for placement of a pump station within the Residential Single-Family (RS) zoning district.
- 48.2 The requirements of the zoning district within which the lot is located can be met because:
- 48.2.1 Staff review of Residential Single-Family (RS) zoning district, WCC 10.46, is completed.
- 48.2.2 The proposed development is consistent with the requirements of the Residential Single-Family (RS) zoning district.
- 48.3 All applicable requirements and regulations found within the WCC, as amended, can be satisfied because:
- 48.3.1 The project will conform to all applicable requirements and regulations, as amended, of the WCC.
- 48.3.2 The staff report reviews all requirements of a specified use, proposed pump station, and incorporates the Hearing Examiner's decision dated July 3, 2012, on related shoreline exemption and wetland variance applications, file numbers SE 2012-003, WV 2012-004 and WV 2012-112.



- 48.3.3 The conditional use permit is to review impacts of the proposed pump station within the Residential Single-Family (RS) zoning district.
- 48.3.4 As conditioned, the proposed pump station can satisfy the requirements for placement of a pump station within the Residential Single-Family (RS) zoning district.
- 48.4 The proposal is compatible with adjacent uses and will protect the character of the surrounding area because:
- 48.4.1 General: The current ground cover is dirt, native grasses and non-native juniper bush. The area along the riverfront has some trees, some which will be removed for pipe installation and others retained. Approximately 0.75 acres of the site will be disturbed via earthmoving activity. The disturbed area will be landscaped per WCC 10.62 to provide beautification, reduce heat and glare, provide shade, reduce noise levels, mitigate stormwater runoff and provide physical separation of adjacent uses.
- 48.4.2 North: Single Family Residential: The pump building may not be visible from any residence on the north side of the river as it will be located approximately 50' lower than the existing ground. All pump noise will be contained within the building.
- 48.4.3 South: Wenatchee River: The river is a major regional water resource with many uses including recreation. The cone fish screen/intake was chosen as it is only 2' high and will be submerged by 4 to 5 feet of water during OHW. The boating public will not be impacted.
- 48.4.4 South: Wenatchee River: The river is a major regional water resource with many uses including recreation. The cone fish screen/intake was chosen as it is only 2' high and will be submerged by 4 to 5 feet of water during OHW. The boating public will not be impacted.
- 48.4.5 West: Native vegetation and vacant: The project footprint, 0.75 acres of disturbed land, has been minimized. Removal of non-native juniper bush will be an improvement. The code required landscaping plants will be chosen to supplement the adjacent native species.
- 48.4.6 The proposed pump station will be an accessory structure to the primary use as an irrigation system. The application materials include a landscaping plan to address visual impacts of the structure to surrounding properties. The Hearing Examiner's decision, dated July 3, 2012, requires re-vegetation planting.
- 48.4.7 The proposed pump station is compatible with adjacent uses and is consistent with the character of the surrounding area
- 48.5 The proposed use will not result in undue adverse impacts affecting the public health, safety, and welfare because:



- 48.5.1 The pump station will indirectly increase public health, safety and welfare by: (a) piping the open canal removes an attractive nuisance; (b) piping the open canal reduces water losses by infiltration and evaporation which increases the in-stream flows of the Wenatchee River which is beneficial to fish and recreation.
- 48.5.2 The proposed pump station is part of a larger irrigation project to develop and improve water quality within the Wenatchee River while increasing the function of the irrigation system. Irrigation systems provide water for agricultural lands for the surrounding areas.
- 48.5.3 The proposed pump station will not result in undue adverse impacts affecting the public health, safety, and welfare.
- 48.6 The proposed use is consistent and compatible with the Comprehensive Plan and any implementing regulation because:
  - 48.6.1 The project is consistent and compatible with the Wenatchee Comprehensive Plan.
  - 48.6.2 Review of the Comprehensive Plan is addressed. Review of the implementing regulations is completed through the staff report.
  - 48.6.3 As conditioned, the proposed pump station is consistent and compatible with the Comprehensive Plan and implementing regulations.
- 49. The project is consistent with City of Wenatchee Code Section 10.65.220 in the following respects:
  - 49.1 Any buildings proposed shall be designed to harmonize with the residential structures of the neighborhood because:
    - 49.1.1 The proposed building will be NEMA rated with roofing and siding to match residential décor.
    - 49.1.2 The application materials do not include conceptual drawings.
    - 49.1.3 As conditioned, the proposed pump station shall be designed to harmonize with residential structures in the area.
  - 49.2 All setback requirements of the district in which the public service facility is proposed shall be observed because:
    - 49.2.1 The proposed pump station, as an accessory structure, is exempt from the required rear yard setback, as addressed.
    - 49.2.2 The proposed pump station is consistent with the Residential Single-Family (RS) zoning district requirements.



- 49.3 If the facility is of an outdoor nature, it shall be completely enclosed by a view-obscuring fence or landscaping at least six feet in height and shall observe the restrictions that apply to fences in the underlying zoning district because:
- 49.3.1 Will conform to WCC 10.62 Landscaping and Screening and any other forthcoming project permits, local code requirements and conditions of approval.
  - 49.3.2 The applicant has submitted a landscaping plan, date stamped July 12, 2012, which includes screening the structure with landscaping. No fencing is proposed.
  - 49.3.3 As conditioned, the proposed pump station provides adequate landscaping to shield the building from other surrounding properties.
- 49.4 Proposed enclosures for public service facilities that exceed a height of six feet shall observe the minimum setback requirements that apply to primary structures in the underlying zoning district because:
- 49.4.1 Building height is approximately 15 feet.
  - 49.4.2 The site plan of record, date stamped March 13, 2012, shows the proposed pump station on parcel number 23-20-28-240-500. Pursuant to the site plan of record, date stamped July 12, 2012, the development will be eighteen feet (18') from the rear yard setback impacting the southern property, parcel number 23-20-28-240-505, also included in the application.
  - 49.4.3 The proposed development is an accessory structure which would be exempt from the required twenty foot (20') setback pursuant to WCC 10.46.020B(2)(d).
  - 49.4.4 The applicant is requesting a reduction from this conditional use permit criteria.
- 49.5 Landscaping and screening: The development shall comply with Chapter 10.62 WCC, Landscape and Screening, as amended because:
- 49.5.1 Will conform to WCC 10.62 Landscaping and Screening and any other forthcoming project permits, local code requirements and conditions of approval.
  - 49.5.2 WCC 10.62.030(B) states "this chapter does not apply to: (1) Agriculture and accessory uses associated with agriculture." The application materials include a landscaping plan, date stamped July 12, 2012.
  - 49.5.3 The proposed pump station is part of the irrigation district primarily serving agricultural users. However, the applicant has submitted a landscaping



plan, date stamped July 12, 2012, which provides adequate screening of the proposed structure.

50. The City of Wenatchee comment letter, dated August 27, 2012, stated that pursuant to WCC 7.22, adopted by Chelan County, the proposed development is required to place curb and sidewalk along the access frontage of Lower Chatham Hill Road. The City recommended entering into a deferred improvement agreement as an alternative to construction.
51. Chelan County Public Works Department issued a Department Policy Statement, file number PW2012-02 dated June 5, 2012, which stated that an applicant may submit a written application to the Board of County Commissioners to waive the construction of sidewalks as regulated under the adopted City of Wenatchee Code Sections 7.22.010 Simultaneous construction of sidewalks and curbs required and 7.22.020 Sidewalks constructed during building improvement.
52. The Chelan County Board of Commissioners has approved the application to waive construction of sidewalks thereby eliminating the requirement for proposed Condition of Approval No. 9, with subparts.
53. The project is not located on a public beach, nor does it block or reduce public use or enjoyment of the area.
54. Chelan County PUD No. 1 comment letter, date stamped August 16, 2012, stated that primary power is located just north of the subject site. Line extensions with associated easements will be required to power the pump station.
55. Chelan County Public Works comment letter, date stamped August 30, 2012, stated that the applicant is required to obtain or demonstrate a Chelan County driveway access permit to access the development site.
56. Chelan County Public Works comment letter, date stamped August 30, 2012, stated that the proposed development required stormwater review, pursuant to Chelan County Code Title 13. The project is within the Wenatchee Watershed Management boundary, pursuant to Chelan County Code Title 13 Appendix A, Chelan County NPDES Phase II Boundary.
57. The proposal has been reviewed for consistency with the City of Wenatchee Comprehensive Plan, Zoning Code Title 10.
58. The application is requesting a reduced rear yard setback from twenty feet (20'), pursuant to WCC 10.46.020B(2)(d), to eighteen feet (18').
59. Planning staff recommended approval, as conditioned, of the propose pump station as presented in the file of record and the site plan of record, date stamped July 12, 2012.
60. The File of Record, Chelan County Department of Community Development Staff Report, and exhibits were received, admitted into the record and considered by the Hearing Examiner.



61. An open record public hearing after legal notice was provided was held on September 19, 2012.
62. Admitted into the record were the following exhibits:
  - 62.1 Exhibit 1: September 11, 2012, letter from Washington State Department of Natural Resources to Chelan County Department of Community Development. Within this letter, facts exist for the Hearing Examiner to find that the intake pipe is on state-owned aquatic lands.
63. The applicant did not appear at the hearing. The applicant was given notice of the date, place and time of the hearing.
64. No member of the public testified in favor of the project.
65. Testifying from the public in opposition to the project was Ken Smekofske of 1026 Lower Sunnyslope Road, Wenatchee, Washington. Mr. Smekofske's testimony related to questions that he had as to the size of the pump and whether or not noise from this pump would impact residential uses in the vicinity. In response to his question, the Hearing Examiner referred Mr. Smekofske to the staff report and application materials where noise impacts from the proposed pump were discussed. Conditions of approval were recommended to mitigate noise impacts.
66. Mr. Smekofske also questioned Mr. Jaspers' expertise in running this type of a pump.
67. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
68. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## CONCLUSIONS

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 proximity of the Chelan County Comprehensive Plan Rural Village, Rural Industrial, Residential/Resource 2.5 and Residential/Resource 5 land use designations. 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. The proposed project meets the definition of "Development" as defined in the Chelan County Shoreline Master Program and WAC 173-27-030 and is considered a substantial development.
7. The authorization of the shoreline permits will not be materially detrimental to the purposes of the Revised Code of Washington, the Washington Administrative Code, the Chelan County Shoreline Master Program, the Chelan County Comprehensive Plan, the Chelan County, or not be otherwise detrimental to the public interest.
8. Subject to the Conditions of Approval, the project design is consistent with the Chelan County Shoreline Master Program requirements.
9. As conditioned, this project is consistent with the City of Wenatchee Comprehensive Plan and City of Wenatchee Zoning Code.
10. 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 2012-144, Pioneer Water Users Association, is hereby **APPROVED**, subject to the conditions noted below.

#### **CONDITIONS OF APPROVAL**

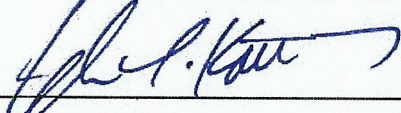
1. All conditions imposed herein shall be binding on the applicant which terms shall include the owner or owners of the property, heirs, assigns, and successors.
2. The applicant shall comply with all applicable local, state, and federal regulations consistent with these conditions. The applicant is responsible for securing all state and federal agency permits and licenses as may be required.
3. Prior to commencement of the project, the applicant shall submit to the Department of Community Development, a letter of compliance, citing and addressing each condition has been met.
4. A copy of this permit and attached conditions shall be kept on-site and provided to the contractor and all others working within the shoreline area at all times. The applicant, contractor, machinery operators and all others working within the shoreline area shall have read this permit and attached conditions and shall follow its conditions at all times.
5. Any development shall proceed in substantial conformance with the application and site plan of record date stamped July 12, 2012, except as modified herein.
6. Pursuant to WCC 10.65.050, the applicant will have one year to act on any approval and the approval shall apply only to the lands identified in the application materials.



7. Pursuant to WCC 10.65.220, the applicant shall construct the pump station with a NEMA rated with roofing and residential siding materials.
8. Pursuant to WCC 10.65.220, the applicant shall complete planting consistent with the landscaping plan in the file of record, date stamped July 12, 2012.
9. Pursuant to Chelan County Code Title 15, the applicant shall obtain a driveway access permit prior to construction of the pump station.
10. Pursuant to Chelan County Code Title 13, the applicant shall complete a stormwater review with Chelan County Public Works prior to commencement of work on the subject site.
11. Prior to commencement of work on the subject site, the applicant shall complete all utility line extensions and any associated easement agreement with Chelan County PUD No.1.
12. The intake pipe is on state-owned aquatic lands and will require an easement from the DNR.

Approved this 19<sup>th</sup> day of September, 2012.

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.**



