

SHORELINE MANAGEMENT PERMIT

ACTION SHEET

Application #: SDP 2018-340
SV 2018-341
RipV 2018-342

Administering Agency Chelan County Department of Community Development

Type of Permits: ☒ Shoreline Substantial Development Permit
☒ Shoreline Variance
☒ Riparian Variance

Action: ☒ Approved ☐ Denied

Date of Action: January 28, 2019

Date Mailed to DOE/AG

Pursuant to Chapter 90.58 RCW, the Chelan County Shoreline Master Program, the Chelan County Comprehensive Code and the Chelan County Code, the above-referenced permits are hereby approved for:

Marchelle Varamini
4724 164th St SE
Bothell, WA 98021

To undertake the following development: Applications for a shoreline substantial development permit, shoreline variance and riparian variance, for retroactive permitting of existing development on Lake Chelan. The development includes two (2) ecology block retaining walls located 10 feet and 45 feet of the OHWM, and an additional ecology block retaining wall, located along 65 feet of an existing access road, 90 feet above the OHWM.

Also included in the request is the permitting of an existing 12 ft x 20 ft shed, located approximately 33 feet from OHWM, a 12 ft x 14 ft picnic pavilion (gazebo) and paver patio, partially located within the riparian and shoreline buffer, and underground electrical service to be installed via trenching from the future home site, down the hillslope to the shed.

The application includes a mitigation planting plan comprised of 800 square feet of native vegetation plantings adjacent to and within 20 feet of the OHWM.

Upon the following property: 2325 Lakeshore Dr, Manson, WA 98831.

Within 200 feet of Lake Chelan and/or its associated wetlands.

The project will be within a shoreline of statewide significance (RCW 90.58.030). The project will be located within a rural shoreline environment designation.

The following Shoreline Master Program provisions are applicable to this development: Sections 7, 9, 11, 16, 21, 27 and 29.

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.

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 WAC 173-27-150 and RCW 90.58.130(2), prior to commencement of this project, the applicant shall obtain any necessary aquatic permits from agencies with jurisdiction which may include, but is not limited to, the Washington State Department of Fish and Wildlife, the Army Corps of Engineers, the Washington State Department of Ecology, Chelan County PUD, Chelan County Building Department and the Washington Department of Natural Resources.
 - 1.1. An after-the-fact building permit is required for any retaining wall(s) exceeding four feet in height and/or supporting a surcharge.
2. Pursuant to Chelan County Shoreline Master Program Section 30.3.5 and 30.3.6, this shoreline permit shall be valid for the activities described within the JARPA and shown on the site plan of record, date stamped October 10, 2018, except as modified by this decision or other jurisdictional agencies.
3. Pursuant to Chelan County Code Section 11.95.060, the granting of the riparian variance and the conditions set forth runs with the land; compliance with the conditions of the variance is the responsibility of the current owner of the property, whether that is the applicant or a successor.
4. Pursuant to Chelan County Code Section 11.95.040, the applicant shall comply with the mitigation planting plan, date stamped September 13, 2018, except as modified by this decision or other jurisdictional agencies.
 - 4.1. Pursuant to CCC Section 11.78.120, bonding at one hundred fifty percent of the cost of the mitigation planting is required. Bonding shall be in effect for a maximum of two years.
 - 4.2. Pursuant to CCC Section 11.78.120, an eighty percent survival rate of plantings shall be achieved for a period of two years. Annual monitoring reports shall be submitted to Department at years 1 and 2 to ensure compliance.
5. Pursuant to CCC Section 3.04.100, the 12 ft x 20 ft shed, located 33 feet from the OHWM is permitted for storage use only. Conversion of this structure to any use, other than storage, will require a residential building permit.
6. Pursuant to Chelan County Shoreline Master Program Section 5.7, the applicant may use emergency actions if necessary to protect life, property, or unique historical or archaeological sites from imminent danger.
7. 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 shall immediately notify the appropriate tribal

and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.

- 7.1. The applicant shall keep an Inadvertent Discovery Plan (IDP) onsite during all ground-disturbing activities, including mitigation planting. A sample of this plan is attached as Exhibit A.
8. Pursuant to Chelan County Shoreline Master Program Section 30.3.10, substantial progress toward construction for which a permit has been granted must be accomplished within two (2) years for the granting of the permit.
9. Pursuant to Chelan County Shoreline Master Program Section 30.3.11, a project which has been granted a permit shall be completed within five (5) years of the issuance of a permit. The Administrative authority may extend the permit for one additional year.

FINDINGS OF FACT

1. The applicant/owner is Marchelle Varamini, 4724 164th St SE, Bothell, WA 98021.
2. The agent is Grette Associates, LLC, Attn: Ryan Walker, 151 S Worthen St, Suite 10, Wenatchee, WA. 98801.
3. The subject property is located at 2325 Lakeshore Dr, Manson, WA 98831.
4. The parcel number is 28-21-27-609-005.
5. The property is legally described as Lot A, BLA 2014-172, recorded September 11, 2014, under Auditor File Number (AFN) 2406038.
6. The property is 1.2 acres per Chelan County Assessor's records.
7. The property is located outside of an Urban Growth Area.
8. The Comprehensive Plan designation and zoning is Rural Waterfront (RW).
9. As stated in the JARPA, questions 5(m) and 5(o), the subject property is currently used for recreational and residential purposes. The property contains a single-family residence (currently under construction), a 320 sq ft fixed pile pier, a 12 ft x 20 ft (240 sq ft) shed, 12 ft x 14 ft (168 sq ft) picnic pavilion (gazebo), paver patio and four retaining walls.

The following permits have been issued to the property:

- 9.1 SDP2006-045/SCUP2006-045 and BP 090322 for a 320 sq ft dock and boatlift
- 9.2 BLA 2014-172 for a two lot boundary line adjustment
- 9.3 BP 170246 for a new 3 bedroom, 2 bathroom single family residence and retaining wall for driveway.
10. An active code violation exists on the property, assigned case number CE 2011-0120, for shoreline disturbance including installation of (2) ecology block retaining walls within 60 feet of the OHWM; an additional ecology block retaining wall, located along 65 feet of an existing access road, 90 feet above the OHWM; and installation of a patio and gazebo within the riparian buffer. This shoreline permit is being processed to resolve these violations.
11. As stated in the JARPA, question 5(l), the upland of the property is a steep hillslope composed of sand and cobble. Vegetation consist of well-spaced mature and juvenile ponderosa pine, bitterbrush, big sagebrush, and various upland grasses. Vegetation on the property is extremely limited within 50 feet of the OHWM of Lake Chelan. There are two mature ponderosa pines, sparse weedy herbaceous species, and bunch grasses. Little transition exists between the steep

upland and the shoreline of Lake Chelan. Unvegetated moderately sloped large cobble exist above and below the OHWM. Little habitat exists on the property given the steeply sloped nature of the topography and southern exposure.

12. The property to the north is in residential and recreational use and is zoned Rural Waterfront (RW).
13. The property to the south is in residential and recreational use and is zoned Rural Waterfront (RW).
14. The property to the east is Lakeshore Drive and is zoned Rural Residential/Resource 2.5 (RR2.5).
15. The property to the west is Lake Chelan.
16. The applicant submitted an Environmental Checklist. Pursuant to WAC 197-11 and RCW 43.21C of the State Environmental Policy Act (SEPA), environmental review and a threshold determination was completed, and a Determination of Non-Significance (DNS) was issued on December 17, 2018. The SEPA Checklist and DNS are included within the file of record and adopted by reference.
17. The Comprehensive Plan has been reviewed; specifically the goals and policies related to the Rural Waterfront Comprehensive Plan designation for consistency with residential and recreational land uses.
18. The Hearing Examiner finds that the project, as conditioned, is consistent with the Comprehensive Plan.
19. According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, there is no mapped habitat on the subject property; however, the site does contain waters of the state, a Class II Fish and Wildlife Habitat Conservation Area. Therefore, CCC, Chapter 11.78 applies to the project.
20. The required riparian buffer for a 'rural' shoreline environment designation is 100 feet from OHWM, unless the lot qualifies for buffer reductions. With reductions, the riparian buffer cannot be administratively reduced below 25 feet. According to the site plan of record, date stamped October 10, 2018, one retaining wall and portions of the paver patio and picnic pavilion (gazebo) are located within the riparian buffer. Therefore, the applicant is requesting a riparian variance to permit the existing development within the buffer.
21. According to the Federal Emergency Management Agency, FIRM panel # 5300150225A, there is no floodplain on the subject parcel. The waterbody is a controlled reservoir.
22. According to the Chelan County GIS mapping, the property is located within a potential geologically hazardous area due to erodible soils and steep slopes. CCC, Chapter 11.86, Geologically Hazardous Overlay District, applies to the subject property.
23. According to the Washington State Department of Natural Resource Maps, the subject site does not contain any streams.
24. According to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject site does not contain wetlands.
25. There are no *known* cultural resources on the subject property. However, in a comment from the Confederated Tribes of the Colville Reservation, dated December 18, 2018, it was stated that the parcel *is* located within a Traditional Cultural Property and *is* within close proximity to CCT allotments. Records also show a survey conducted adjacent to the project parcel tested positive for cultural resources. In addition, DAHP's predictive model shows that the parcel in question lies within a high risk or high probability area for encountering cultural resources. It was recommended that a Secretary of Interior-qualified professional archaeologist serve as a monitor on the project for any ground-disturbing activities.

26. Pursuant to CCSMP Section 27, developers shall notify local governments of any possible archaeological materials uncovered during excavation. Staff recommended a condition of approval, requiring an inadvertent discovery plan be kept onsite during all ground-disturbing activities.
27. Construction to begin upon receipt of all permits and end approximately two weeks from start date.
28. Access is provided by Lakeshore Drive, a 60-foot wide county right-of-way.
29. Noise will be similar to other residential and recreational uses.
30. Minor visual impacts are from the water and surrounding properties.
31. 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 November 8, 2018, with comments due December 14, 2018. The following agencies provided comments:
 - 31.1 Chelan County Fire District #7 responded on November 20, 2018
 - 31.2 Confederated Tribes of the Colville Reservation responded on December 18, 2018
32. The following agencies were notified but did not respond:
 - 32.1 Chelan County Fire Marshal
 - 32.2 Chelan County Building Official
 - 32.3 Chelan County PUD
 - 32.4 WA State Department of Natural Resources
 - 32.5 WA State Department of Ecology
 - 32.6 WA State Department of Fish & Wildlife
 - 32.7 US Army Corps of Engineers
 - 32.8 Department of Archaeology & Historic Preservation
 - 32.9 Yakama Nation
33. One public comments was received from Arny and Elmira Forner on December 15, 2018.
34. The application was submitted on October 10, 2018.
35. A Determination of Completeness was issued on November 2, 2018.
36. The Notice of Application was issued on November 8, 2018.
37. The Notice of Public Hearing was issued on January 11, 2019.
38. The project is consistent with Chelan County Code (CCC) Section 11.04.020 in the following respects:
 - 38.1 The retaining walls, access trail, storage buildings, gazebo and patio are considered accessory uses/structures. Accessory uses/structures are permitted in the RW zoning district.
 - 38.2 The development is permitted within the RW zoning district.
39. The project is consistent with CCC Section 11.16.020 in the following respects:
 - 39.1 The RW zoning district requires a 5 foot setback from side property lines for all structures. Not included in the definition of structure are retaining walls and structures less than four feet in height, according to the Chelan County definition of "structure."
 - 39.2 According to the site plan of record, the existing picnic pavilion (gazebo) does not meet the required side yard setback. Relocation or removal of this structure will be required.

- 39.3 The retaining wall, located 45 feet landward of the OHWM, crosses the north property line and is partially located on the adjacent property. This application includes only that portion of the wall lying on the subject property. The adjacent landowner is responsible for permitting their portion of the wall.
- 39.2 The project, as conditioned, complies with the dimensional standards for the RW zoning district.
- 40. The project is consistent with CCC Section 11.95.030 (1)(A) in the following respects:
 - 40.1 The requested riparian variance is for a buffer reduction for the existing retaining wall, located approximately 10 feet from the OHWM, and the existing paver patio and picnic pavilion (gazebo), located partially within the 25-foot riparian buffer.
 - 40.2 Retaining walls are common along the Lake Chelan Shoreline, especially when used to provide shoreline access on steep terrain. The existing wall is being utilized to stabilize the upper slope in order to provide safe access to the dock. Shoreline access is a property right and does not grant a special privilege.
 - 40.3 The paver patio and picnic pavilion (gazebo) are considered development and are not permitted within the 25-foot buffer. While these types of structures currently exist along Lake Chelan, many of them were placed without permits, or prior to riparian regulations. The property contains ample room to construct patios and gazebos outside of the designated riparian buffer. Permitting a reduced buffer for these structures would grant a special privilege to the property owner.
 - 40.4 Staff recommended approval of the lower retaining wall, as a property right for safe shoreline access. However, staff originally recommended denial of the request to reduce the buffer for the patio and gazebo. After the revised site plan was submitted, staff recommended approval for the entire project.
 - 40.5 The reduced buffer for the retaining wall is necessary for the preservation of a property right and does not grant a special privilege. A reduced buffer for the patio and gazebo is not necessary for the preservation of a property right and would grant a special privilege to the property owner.
- 41. The project is consistent with CCC Section 11.95.030 (1)(B) in the following respects:
 - 41.1 The plight of the applicant is based on the physical characteristics of the subject property; specifically the steep topography and the required riparian setback for development. The applicant does not have control of the topography nor the required riparian setbacks. Furthermore, access to the shoreline would be unsafe without installation retaining walls to aid in slope stabilization.
 - 41.2 The request is based on physical characteristics of the subject property and the applicable code regulations, over which the applicant has no control.
- 42. The project is consistent with CCC Section 11.95.030 (1)(C) in the following respects:
 - 42.1 As stated above, the hardship is based on the physical characteristics of the subject property and the application of the riparian regulations that limit development within the required riparian buffer. The existing retaining walls were constructed by the previous land owner during construction of the access trail down to the water. This access trail was installed without the benefit of shoreline permits and included retaining walls constructed within the designated shoreline and riparian buffers. Due to the steep topography of the lot, the Hearing Examiner finds the walls were necessary to stabilize the slope and prevent further erosion of the hillside, in order to provide safe access to the shoreline and dock.

- 42.2 The existing paver patio and gazebo were installed by the current land owner. These structures are partially located within the riparian buffer. There is room waterward of the 25-foot riparian setback for these structures. The Applicant will move the gazebo and the paver patio to comply with setback requirements.
- 42.3 The hardship for installation of the retaining wall is a result of the physical characteristics of the subject property.
- 43. The project is consistent with CCC Section 11.95.030 (1)(D) in the following respects:
 - 43.1 A majority of properties within the lower Lake Chelan basin are privately owned and subdivided for rural and recreational development of the shoreline. Many of the lots within this area were created prior to critical areas regulations. Properties along this reach of shoreline are steeply sloped toward the water.
 - 43.2 The purpose of the retaining wall within the buffer is to stabilize the slope and prevent erosion of the access path to the dock. Pursuant to CCC Section 11.78.020(8), the property is authorized to have one access/view corridor, twenty feet or less in width, provided clearing is done in a manner that prevents erosion.
 - 43.4 The installation of the retaining wall in association with the access path is consistent with Goal CL 1 of the comprehensive plan which is to identify and protect critical areas from adverse environmental impacts while providing for reasonable use of private property.
 - 43.5 As previously stated, there is room outside of the riparian buffer for a patio and gazebo. The Applicant will move these to comply with the setback requirements.
 - 43.6 Authorization of this variance for the retaining wall within the riparian buffer will not be materially detrimental to the public welfare and safety, be injurious to the property or otherwise detrimental to the objectives of the comprehensive plan.
- 44. The project is consistent with CCC Section 11.95.030 (1)(E) in the following respects:
 - 44.1 The hardship of the applicant directly relates to the need for stabilization along the path to the shoreline and the required riparian buffer, per CCC Chapter 11.78. The code requires a minimum setback distance of 25 feet from the shoreline, and does not account for topography and access.
 - 44.2 The hardship for construction of the retaining wall results from the application of riparian buffer regulations, per CCC Chapter 11.78.
- 45. The project is consistent with CCC Section 11.78.230(2)(A) in the following respects:
 - 45.1 The current variance request is for the construction of retaining walls within the riparian buffer of Lake Chelan. As stated in JARPA question 5(l), vegetation on the property is extremely limited within 50 feet of the OHWM of Lake Chelan. There are two mature ponderosa pines, sparse weedy herbaceous species, and bunch grasses. Little transition exists between the steep upland and the shoreline of Lake Chelan. Unvegetated moderately sloped large cobble exists above and below the OHWM. Little habitat exists on the property given the steeply sloped nature of the topography and southern exposure.
 - 45.2 An 800 square foot vegetative planting plan has been designed adjacent to the retaining wall in order to mitigate for the shoreline disturbance. The plan includes installation of 5 Ponderosa Pine and 120 Kinnikinnick.
 - 45.3 Staff recommended a condition of approval, requiring compliance with the proposed planting plan. Staff further recommends bonding in compliance with CCC Section 11.78.210.

- 45.4 The proposal, as conditioned, will not significantly impact the fish and wildlife habitat. The proposed mitigation will address vegetation enhancement within the riparian buffer.
46. The project is consistent with CCC Section 11.78.230(2)(B) in the following respects:
- 46.1 The proposed retaining wall is necessary to provide safe access on the steep shoreline by stabilizing the slope. This serves as the only upland access to the shoreline for the subject property.
- 46.2 The paver patio and gazebo will be relocated outside of the buffer and serve the same.
- 46.3 The request for the retaining wall is reasonable, considering the steep topography and need for safe access to the shoreline and existing dock.
47. The project is consistent with CCC Section 11.78.230(2)(C) in the following respects:
- 47.1 Access to the existing dock and shoreline would be infeasible without an access path. The path requires the retaining wall to stabilize the steep slopes and prevent erosion.
The paver patio and gazebo will be relocated outside of the 25-foot shoreline setback. These structures do not require location in close proximity to the shoreline and have the potential to impact fish and wildlife habitat.
- 47.2 Staff found the design and location of the retaining wall will not impact fish and wildlife habitat. The impacts to fish and wildlife habitat will be lessened by the relocation of the patio and gazebo outside the riparian buffer. The impacted area should be restored with native vegetation.
48. The project is consistent with CCC Section 11.78.230(3)(A) in the following respects:
- 48.1 The variance originally contained two requests: one for the existing retaining wall and the other for the existing paver patio and gazebo. However, the gazebo and paver patio will be moved to comply with setback requirements.
- 48.2 The request to reduce the buffer for the retaining wall is based on the steep topography of the lot and the need to obtain safe access to the shoreline to utilize the dock. The retaining wall serves to stabilize the steep hillside along the view/access corridor, as permitted under CCC Section 11.78.020(8).
- 48.3 The variance request for the retaining wall is not substantially based on illegal or nonconforming circumstances.
49. The project is consistent with CCC Section 11.78.230(3)(B) in the following respects:
- 49.1 The request is based on the steepness of the lot within the riparian buffer, and the need to obtain access to the shoreline area and dock.
- 49.2 The variance request is not based upon lack of reasonable economic return.
50. The project is consistent with CCC Section 11.78.230(3)(C) in the following respects:
- 50.1 The property owner acquired the property on May 17, 2016. The applicant had no knowledge of the active violation at the time of purchase. The retaining wall was constructed by the previous owner. The applicant, however, constructed the paver patio and gazebo within the riparian buffer. The Applicant will move these to comply with the setback requirements.
- 50.2 The steep topography and the critical areas regulations existed at the time the applicant acquired the property. The wall, however, was constructed by the previous owner and not disclosed as a violation at the time the applicant acquired the property.

51. The project is consistent with CCC Section 11.78.230(3)(D) in the following respects:
 - 51.1 The proposed variance does not change the permitted land uses.
 - 51.2 This does not apply.
52. The project is consistent with CCC Section 11.78.230(3)(E) in the following respects:
 - 52.1 The proposed variance does not affect density.
 - 52.2 This does not apply.
53. The project is consistent with Chelan County Shoreline Master Program CCSMP) Section 29.1 (c) in the following respects:
 - 53.1 The provisions of the SMA and WAC have been met through the adoption of the CCSMP. The appropriate CCSMP requirements are addressed below.
 - 53.2 According to JARPA, question 6(g), the fair market value of the project is \$15,000. The project is not exempt from the substantial development permit requirement.
 - 53.3 The lower retaining wall associated with the access path is located within the shoreline buffer; therefore, the provisions for a Shoreline Variance apply to the project.
 - 53.4 The project is consistent with the provisions of the SMA, WAC and CCSMP.
54. The project is consistent with CCSMP Section 29.2.2 (a) in the following respects:
 - 54.1 CCSMP Section 16 restricts residential development within the common line setback. The common line setback for the subject property is 20 feet from OHWM. The retaining wall is needed to stabilize the slope and prevent erosion of the access path, which provides safe access to the dock. This is necessary due to the steep topography of the lot, adjacent to and within 20 feet of the shoreline.
 - 54.2 The existing regulations do not take into account the necessary access to docks on lots with steep topography. The strict application of the CCSMP standards would preclude a reasonable permitted use of the property.
55. The project is consistent with CCSMP Section 29.2.2 (b) in the following respects:
 - 55.1 The subject property is a steeply sloped residential lot, developed with a single-use dock, access path from the upland to the shoreline and a single family residence (under construction). In order to access the shoreline, the previous owner created an access path which required multiple retaining walls, due to the steeply sloping topography. The requested variance is for the retaining wall located approximately 10 feet from the OHWM, within the common line setback area.
 - 55.2 The hardship results from the steep topography adjacent to the shoreline and within the common line setback, and the need for access to the dock within the required setback.
56. The project is consistent with CCSMP Section 29.2.2 (c) in the following respects:
 - 56.1 The shoreline environment designation is rural, which promotes shoreline access, residential and recreational development. Lots within Chelan County are permitted to have one view/access corridor up to 20-feet wide. Due to the topographical constraints of this lot, retaining walls are necessary to stabilize the access path and prevent erosion. Properties south of the subject property contain access paths, retaining walls, bulkheads and in-water structures.
 - 56.2 According to the site plan of record, date stamped October 10, 2018; the retaining wall is located entirely on private property.

- 56.3 The retaining wall associated with the access path is compatible with the permitted uses and structures in the area and will not cause adverse effects to adjacent properties or the shoreline designation.
57. The project is consistent with CCSMP Section 29.2.2 (d) in the following respects:
- 57.1 Other properties in the vicinity with similar topography are developed with access paths to the shoreline, many of which include retaining walls. The retaining walls on the subject property been placed in those areas that require additional stabilization and not along the entirety of the trail.
- 57.2 The variance is not a grant of special privilege and the minimum necessary to afford relief and meet applicable codes.
58. The project is consistent with CCSMP Section 29.2.2 (e) in the following respects:
- 58.1 The property is zoned for residential use. According to the site plan of record, date stamped October 10, 2018, the retaining wall is located on private property for private access to the shoreline.
- 58.2 The development is for private use, located on private property. Approval of this project will not cause a substantial detrimental effect on public use and interest.
59. The project is consistent with CCSMP Section 29.2.2 (f) in the following respects:
- 59.1 The proposed access trail is located landward of the OHWM.
- 59.2 The project will not impact navigation.
60. The project is consistent with CCSMP Section 29.2.3 in the following respects:
- 60.1 The Shoreline Master Program allows for recreational and residential use of private property. The installation of a retaining wall is minor in nature and provides safer shoreline access to the dock. It would be anticipated that properties with similar topography would potentially require variances to install access with retaining walls.
- 60.2 The cumulative impacts of granting such variances are minimal and remain consistent with the policies of the Shoreline Management Act.
61. The project is consistent with CCSMP Section 29.4.1 (a) in the following respects:
- 61.1 The project area is located on private property in the vicinity of other similarly developed lots.
- 61.2 The access path, associated retaining walls, and residential structures will not affect statewide nor local interests.
62. The project is consistent with CCSMP Section 29.4.1 (b) in the following respects:
- 62.1 This section of Lake Chelan carries a 'rural' shoreline designation, which allows for shoreline access, residential and recreational uses. As stated in the JARPA, the shoreline consists of steep slope that extends landward of the OHWM by 20 feet. The top of the slope is approximately 10 feet above the elevation of the existing concrete abutment for the dock. A total of approximately 15 cubic yards of material was removed from the shoreline and a trail approximately 5 feet wide by 38 feet long was excavated into the slope from the down-lake property boundary toward the dock. At the dock location, the trail widens to 15 feet wide by 15 feet long. Concrete ecology blocks have been installed at the landward edge of the access trail, approximately 10 feet from the OHWM.
- 62.2 Two additional retaining walls have been installed along the access path, both outside of required buffers but within shoreline jurisdiction. One wall is located approximately 45

feet from the OHWM and the other is located approximately 90 feet from the OHWM. The walls were constructed using concrete ecology blocks stacked two (2) high.

- 62.3 The upland of the property is a steep hill slope composed of sand and cobble. Vegetation consists of well-spaced mature and juvenile ponderosa pine, bitterbrush, big sagebrush, and various upland grasses. Vegetation within 50 feet of the OHWM is limited. Little habitat exists on the property given the steeply sloped nature of the topography and southern exposure.
- 62.4 The proposed 800 square feet of mitigation plantings add native vegetation in an area that is currently devoid of vegetation. The plantings will improve habitat and also help reduce erosion adjacent to the shoreline.
- 62.5 Lake Chelan is a highly developed shoreline. Properties up-lake and down-lake of the subject site are highly developed with upland and in-water structures.
- 62.6 The proposed project will not significantly impact the natural character of the shoreline. The proposed mitigation plantings will enhance the character of the shoreline by improving riparian habitat adjacent to the OHWM.
- 63. The project is consistent with CCSMP Section 29.4.1 (c) in the following respects:
 - 63.1 The development will enhance the residential and recreational use of the subject property and provide for safer shoreline access by controlling toe-slope erosion along the shoreline.
 - 63.2 The access path with associated retaining walls and the residential structures will be a long term benefit to the property.
- 64. The project is consistent with CCSMP Section 29.4.1 (d) in the following respects:
 - 64.1 The development is located on a steep hillside with minimal vegetation.

The project includes a mitigation planting plan including 800 square feet of native vegetation plantings adjacent to the shoreline.
 - 64.2 The proposed development will not have a substantial impact on the resources and ecology of the shoreline. The proposed mitigation planting will enhance the shoreline habitat adjacent to the OHWM.
- 65. The project is consistent with CCSMP Section 29.4.1 (e) in the following respects:
 - 65.1 The project is located on privately-owned property, with no public shoreline access.
 - 65.2 The project will not impact public access to the shoreline.
- 66. The project is consistent with CCSMP Section 29.4.1 (f) in the following respects:
 - 66.1 The subject property is under private ownership with no public access.
 - 66.2 The project will not affect public recreational opportunities, as the property is privately owned.
- 67. The project is consistent with CCSMP Section 29.4.2 in the following respects:
 - 67.1 Based on the findings made in this decision, the Hearing Examiner finds the project to be consistent with the intent and spirit of the principles outlined above.
- 68. This application includes several requests, in order to retroactively permit existing development along the shoreline of Lake Chelan, including shoreline substantial development, shoreline variance and riparian variance requests.

69. The applicant is seeking a shoreline substantial development permit for the permitting of three retaining walls, constructed by the previous landowner, located within shoreline jurisdiction. The walls were installed for erosion control and slope stability of an access path, due to the steep terrain of the property. The walls consist of stacked concrete ecology blocks. The first wall, located approximately 10 feet from the OHWM requires a shoreline and riparian variance, as it is located waterward of the common line and riparian buffer. The two other walls are located outside of the required shoreline and riparian buffers and are similarly used to stabilize access to the shoreline and protect existing residential structures. Because the walls serve to stabilize the slope adjacent to the access path (an outright permitted use) and the applicant has proposed mitigation plantings to enhance riparian habitat within the buffer, staff recommended approval of the retaining walls.
70. The applicant originally sought retroactive permitting of an existing 12 ft x 20 ft shed, 12 ft x 14 ft picnic pavilion (gazebo) and paver patio that is currently installed along a flat bench, above the OHWM. The shed is located approximately 33 feet from the OHWM and qualifies for an exemption from building permitting, per CCC Section 3.4.100. This structure is considered an appurtenance to the single family residence (currently under construction) and meets the applicable zoning, riparian and shoreline setbacks. The existing paver patio and gazebo do not meet the required 25-foot riparian setback, and the Applicant will move them to comply with the setback requirements.
71. In addition, the applicant proposes to add electrical service to the existing 12 ft x 20 ft shed. The new electrical infrastructure will be located underground, and installed via trenching from the future home site, directly down the hill slope to the shed. Minimal vegetation removal will be required. Staff recommended approval of the electrical service. However, the applicant should be aware that the storage structure is authorized for storage use only and is not allowed to contain any plumbing or mechanical equipment, or be used as habitable space without the proper permitting.
72. The applicant has submitted a mitigation planting plan to address the active code violation on property and to improve shoreline habitat within the buffer. The mitigation plan includes 800 square feet of native vegetation plantings including 5 Ponderosa Pine and 120 Kinnikinnick. Because the project is retroactive, as a result of code enforcement action, staff recommends bonding to ensure compliance. Pursuant to CCC Section 11.78.210 bonding at one hundred fifty percent of the cost of the restoration work is required. In addition, the applicant shall ensure an eighty percent survival rate be achieved for a period of two years. Staff recommended annual monitoring reports be submitted to the Department at years 1 and 2.
73. Due to the existing development along this section of the lake, the portions of the project recommended for approval will have minimal impacts to the shoreline environment and will be compatible with surrounding land uses. Approval of the retaining walls will provide shoreline access that will control erosion and stabilize the hillside. Furthermore, those recommended aspects of the project, as summarized throughout this report, remain consistent with development in the area, in addition to the goals and policies of the Chelan County Comprehensive Plan and Shoreline Master
74. An open record public hearing after legal notice was provided was held on January 23, 2019.
75. 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.
76. Appearing and testifying on behalf of the applicant was Ryan Walker. Mr. Walker testified that he was an agent authorized to appear and speak on behalf of the property owner. Mr. Walker testified that they had submitted a revised site plan dated January 21, 2019, in which the Applicant will voluntarily relocate the gazebo and paver patio outside of all required setbacks, so that a variance for the gazebo and paver patio are no longer requested. Mr. Walker testified that all of the proposed Conditions of Approval were acceptable to the Applicant.

77. No member of the public testified at this hearing.
78. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
79. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSION 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 Chelan County Comprehensive Plan Rural Waterfront 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. 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. The project is not located on a public beach, nor does it block or reduce public use or enjoyment of the area.
9. Subject to the Conditions of Approval, the project design is consistent with the Chelan County Shoreline Master Program requirements, and the Chelan County Zoning Code.
10. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

This Shoreline Substantial Development Permit, Shoreline Variance and Riparian Variance is granted pursuant to the Shoreline Master Program of Chelan County, as amended, and nothing in this permit shall excuse the applicant from compliance with any other federal, state, or local statutes, ordinances, or regulations applicable to this project, but not inconsistent with the Shoreline Management Act of 1971 (Chapter 90.58 RCW).

This Shoreline Substantial Development Permit, Shoreline Variance and Riparian Variance may be rescinded pursuant to RCW 90.58.140(7) in the event the permittee fails to comply with the terms and conditions hereof.

CONSTRUCTION PURSUANT TO THIS SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT, SHORELINE VARIANCE AND RIPARIAN VARIANCE SHALL NOT BEGIN NOR IS AUTHORIZED UNTIL TWENTY-ONE (21) DAYS FROM THE DATE OF FILING AS DEFINED IN RCW 90.58.140(6) AND WAC 173-14-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a)(b)(c).

Substantial progress toward construction of the project for which this permit has been granted must be accomplished within two (2) years of the filing date of this permit. Authorization to conduct development activities granted by this permit shall terminate five (5) years from the filing date of this permit.

Approved this 28th day of January, 2019.

CHELAN COUNTY HEARING EXAMINER


Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the “date of receipt” as defined by Washington Law to file a petition for review with the Shorelines Hearings Board (for the shoreline substantial development permit and shoreline variance permit) as provided for in RCW 90.58.180 and Chapter 461-08 WAC, the rules of practice and procedure of the Shorelines Hearings Board.

Anyone aggrieved by this decision (for the riparian variance) has twenty-one days from the issuance of this decision to file an appeal with the Chelan County Superior Court as provided for under Judicial Review of Land Use Decisions, RCW 36.70C.040(3).

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.

**THIS SECTION FOR DEPARTMENT OF ECOLOGY USE ONLY IN REGARD TO A
CONDITIONAL USE AND/OR VARIANCE PERMIT**

Date received by the Department _____

Approved _____

Denied _____

This conditional use/variance permit is approved / denied by the Department pursuant to Chapter 90.58 RCW.

Development shall be undertaken pursuant to the following additional terms and conditions:
