

SHORELINE MANAGEMENT PERMIT

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ACTION SHEET

MAR 27 2019

**CHELAN COUNTY
COMMUNITY DEVELOPMENT**

Application #: SDP 2018-263 SCUP 2018-264 SCUP 2018-265, SCUP 2018-266

Administering Agency Chelan County Department of Community Development

Type of Permits:

- ☒ Shoreline Substantial Development Permit
- ☒ Shoreline Conditional Use Permit
- ☒ Shoreline Conditional Use Permit
- ☒ Shoreline Conditional Use Permit

Action: ☒ Approved ☐ Denied

Date of Action: March 26, 2018

Date Mailed to DOE/AG

Pursuant to Chapter 90.58 RCW and the Shoreline Master Program of Chelan County, the following permit is hereby approved:

Kathryn Gilliland
1284 S Lakeshore
Chelan, WA 98816

This is an application for a shoreline substantial development permit and three shoreline conditional uses to remove an existing pier, construct a new pier, replace existing shoreline stabilization, and place a boatlift, buoy and swim float. The new pier will be attached to a new abutment along the repaired seawall at the OHWM and extend 57 feet water-ward, to a water depth of 12 feet. The boatlift will be installed on the up-lake (west) side of the pier, the proposed buoy will be approximately 34' from the west property line at a water depth of approximately 19 feet; and, the swim float will be placed near the center of the parcel at a water depth of approximately 19 feet. Combined, the project will entail a total of 675 sq ft of overwater coverage.

Upon the following property: 1284 S Lakeshore Rd, Chelan, WA 98816, Chelan, WA 98816.

Within 200 feet of the 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. Provide a copy of the Chelan County PUD license agreement.
 - 1.2. Provide a copy of the permit from Department of Natural Resources for sway of the swim float and buoy, or an email, exempting the development for the required permit.
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 August 14, 2018, except as modified by this decision or other jurisdictional agencies.
3. 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.
4. Pursuant to RCW 27.53.020, 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. A cultural resources survey may be required.
5. 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.
6. 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 Kathryn Gilliland, 1284 S Lakeshore, Chelan, WA 98816.
2. The agent is Anne Hessburg, Grette Associates, LLC, 151 S Worthen Street, Suite 101, Wenatchee, WA 98801.
3. The project location is 1284 South Lakeshore Rd., Chelan, WA 98816.
4. The parcel number for the subject property is 27-22-08-705-136.
5. The property is legally described as the Minneapolis Beach Lot J, 0.15 acres.
6. The proposed development is not within an Urban Growth Area.
7. The Comprehensive Plan designation and zoning for the subject property is Rural Waterfront (RW).
8. As stated in the JARPA, the subject property is in currently in recreational use and contains the following structures:
 - 8.1 Cabin with attached deck (not identified in 2003 Assessor's records or within the Chelan County building records). An email from the applicant's agent on October 2, 2018 identifies the cabin shown on the site as a storage building that is not used for habitation
 - 8.2 Pumphouse, see easement AFN 246803
 - 8.3 Seawall/armoring (no permit information)
 - 8.4 Concrete boat launch (no permit information)
 - 8.5 Existing buoy to remain (no permit information)
9. As stated in the JARPA, the property consists of gently sloping upland leading to a rock and concrete armored shoreline at the OHWM. Some of the concrete has broken over time and there is some erosion behind some sections of the shoreline between the existing crib dock and the seawall. The upland between the road and shoreline is gently sloping and in lawngrass. A majority of the property is in lawngrass, with a few coniferous trees and a few shrubs near the road. There is a low level of fish and wildlife habitat on site due to the size of the lot and lack of native vegetation. Below OHWM habitat consists of moderately sloping, unvegetated rock and cobble.
10. The property to the north of the subject property is Lake Chelan.
11. The property to the south of the subject property is South Lakeshore Rd and is zoned Rural Recreational/Residential (RRR).
12. The property to the east is in residential and recreational use and is zoned Rural Waterfront (RW).
13. The property to west of the subject property is in residential and recreational use and is zoned Rural Waterfront (RW).
14. 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 Mitigated Determination of Non-Significance (DNS) was issued on October 31, 2018. The SEPA Checklist and MDNS are included within the file of record and adopted by reference.

15. The Comprehensive Plan was reviewed. Specifically the goals and policies related to the Rural Waterfront land use designation for consistency with proposed recreational land uses.
16. Pursuant to the Comprehensive Plan, Rural Element, Section VII(A), the purpose of the Rural Waterfront Designation is to provide the opportunity for the development, redevelopment and infill of existing intensely developed shoreline areas for residential, and water related/water dependent recreational and tourist development consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan.
17. Furthermore, the project is consistent with Goal E of the Resource Element, which states: Assure an appropriate pattern of sound development in suitable locations without diminishing the quality of environment along the shorelines.
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, the subject site does not contain any protected habitat species or plants but is located within the riparian shoreline.
20. According to the Federal Emergency Management Agency, FIRM panel # 2300150225A, there is no floodplain on the subject parcel. The waterbody is a controlled reservoir.
21. According to the Chelan County GIS mapping, the property is located within a potential geologically hazardous area due to erodible soils. CCC, Chapter 11.86, Geologically Hazardous Overlay District, applies to the subject property; however, Chelan County does not require geologic site assessments for accessory structures waterward of the OHWM, per the Building Official.
22. According to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject site does not contain wetlands.
23. There are no known cultural resources on the subject property. Pursuant to CCSMP Section 27, developers shall notify local governments of any possible archaeological materials uncovered during excavation.
24. Construction: Phasing/timing is to begin upon receipt of all permits and will end approximately one month from start date.
25. The subject property is accessed by South Lakeshore Road.
26. The noise impacts will be similar to other residential and recreational uses, construction noise during demolition of the existing dock and installation of the new pier and boatlift. The project is required to comply with CCC, Chapter 7.35, Noise Control.
27. Visual impacts will be from the water and surrounding properties. Adjacent properties include piers and boatlifts, so visual impacts will be similar to what currently exists in the area.
28. The Notice of Application was referred to surrounding property owners within 300 feet (excluding 60 feet right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on September 11, 2018, with comments due October 11, 2018. Agency comments are considered by the Hearing Examiner and, when appropriate, incorporated as Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received:
 - 28.1 Chelan County PUD No. 1 responded on June 19, 2018.
29. The following agencies were notified but did not respond:
 - 29.1 WA Department of Fish and Wildlife.

- 29.2 US Department of Fish and Wildlife – Shorelines.
- 29.3 Department of Historic Preservation & Archaeology.
- 29.4 Department of Ecology.
- 29.5 US Army Corps of Engineers.
- 29.6 Yakama Nation.
- 29.7 Confederated Tribes of the Colville Reservation.
- 29.8 City of Chelan
- 29.9 Washington State Department of Natural Resources
- 30. Public comments were received from Jim Kelly, received September 10, 2018.
- 31. The application materials were submitted on August 14, 2018.
- 32. A Determination of Completeness was issued on August 27, 2018.
- 33. The Notice of Application was provided September 11, 2018.
- 34. The Notice of Public Hearing was provided February 22, 2019.
- 35. The project is consistent with Chelan County Code (CCC) Section 11.16.020 in the following respects:
 - 35.1 The RW zoning district requires a 5 foot setback from side property lines. The site plan of record shows all proposed development outside the setback pier and boatlift will be located 40 feet from the north property line and 30 feet from the south property line.
 - 35.2 The proposed pier, boatlift, buoy and swim float meet the required five-foot side yard setback. The seawall repair and stabilization is not required to meet a setback pursuant to Chelan County Code Section 11.88.040(7).
- 36. The project is consistent with Chelan County Shoreline Master Program (CCSMP) Section 29.1 in the following respects:
 - 36.1 The provisions of the SMA and WAC have been met through the adoption of the CCSMP. The appropriate CCSMP requirements are addressed below. The CCSMP does not address boatlifts, jetski lifts or buoy lines. Therefore the provisions for a Conditional Use Permit apply.
 - 36.2 According to JARPA, question 6(g), the fair market value of the project is \$80,000. The project is not exempt from the substantial development permit requirement.
 - 36.3 The proposed single-use pier boatlift, buoy and swim float and seawall repair and stabilization are water-dependent uses and “Shoreline Works and Structures.” These uses are permitted within the shoreline buffer and waterward of the OHWM.
- 37. The project is consistent with CCSMP Section 21.A.3.4 in the following respects:
 - 37.1 For the new pier, the applicant has proposed using a total of twelve (12) 6-inch steel piles. Each pile would be driven to 10’ of depth or bearing, into the substrate, or use concrete footings placed in the dry. Wood or steel cross bracing will be placed between each pair of piles. Stringers of pressure-treated timber or steel will be attached to the piles with metal brackets to crate framework for the composite decking. No wood or metal preservatives, paints, sealers, chemicals or other substances harmful or toxic to fish and shellfish will be applied to the pier system once it has been placed in the water.

- 37.2 According to the cross section details, date stamped April 5, 2018, the pilings will be located a minimum one (1) foot above OHWM. Because Lake Chelan is a controlled reservoir, the extreme high water elevation is synonymous with the ordinary high water.
- 37.3 The proposed dock complies with the CCSMP dock construction standards.
- 38. The project is consistent with CCSMP Section 21.A.6.1 in the following respects:
 - 38.1 The property was created prior to May 3, 1994, via the Minneapolis Plat, recorded September 9, 1929.
 - 38.2 The lot qualifies for a single-use dock.
- 39. The project is consistent with CCSMP Section 21.A.6.2 in the following respects:
 - 39.1 As described in the JARPA and pier plan, the proposed pier extends approximately 57' from OHWM, to meet a water depth of approximately 12 feet. The "L" shaped pier is 6' wide extending to an 8'x 19.5' platform. The overall area of the proposed pier will be 450 square feet.
 - 39.2 The proposed design of the new dock is consistent with the CCSMP dimensional standards for residential piers and docks.
- 40. The project is consistent with CCSMP Section 21.A.6.4 in the following respects:
 - 40.1 The site plan shows the pier and all proposed development outside of the 10' side property line setback.
 - 40.2 The proposed development meets the required 10' setback from the side property lines.
- 41. The project is consistent with CCSMP Section 29.3.2 (a) in the following respects:
 - 41.1 The applicant is requesting to place a boatlift, buoy and a swim float which are not addressed in the CCSMP and therefore requires review under a Shoreline Conditional Use Permit.
 - 41.2 The policies of the CCSMP and SMA provide for recreational use of the shoreline.
 - 41.3 The proposed development is consistent with the CCSMP as a recreational use.
- 42. The project is consistent with CCSMP Section 29.3.2 (b) in the following respects:
 - 42.1 The applicant is requesting to place a boatlift on the up-lake (west) side of the pier, a buoy at approximately 34' from the west property line at a water depth of approximately 19 feet and a swim float near the center of the parcel at a water depth of approximately 19 feet. The Department of Natural Resources requests that any development impacting waters above the 21' of depth have DNR permit. Floatation devices placed at 19' are anticipated to sway over the 21' of depth.
 - 42.2 The proposed use/development is located on private property. The swim float and buoy will sway into DNR jurisdiction and a permit is required for placement.
- 43. The project is consistent with CCSMP Section 29.3.2 (c) in the following respects:
 - 43.1 Boatlifts and buoys are common along the Lake Chelan shoreline. Swim floats are less common but are associated with common water activities including swimming. This section of the lake is highly developed with residential and recreational use.
 - 43.2 The proposed development is compatible with the surrounding land uses in the area.

- 44. The project is consistent with CCSMP Section 29.3.2 (d) in the following respects:
 - 44.1 The shoreline designation is 'rural.' The 'rural' designation permits residential and recreational uses and development with appropriate permits.
 - 44.2 The proposed development is consistent with the 'rural' shoreline designation and will cause no unreasonable adverse effects to the shoreline environment designation.
- 45. The project is consistent with CCSMP Section 29.3.2 (e) in the following respects:
 - 45.1 The proposed boatlift, buoy and swim float will be located on private property with some sway onto DNR waters. The sway onto DNR waters is authorized with proper permits.
 - 45.2 The proposed development is for private use, placed on private property and with property permits authorized to sway onto DNR lands. The public interest will not suffer substantial detrimental effect.
- 46. The project is consistent with CCSMP Section 29.3.4 in the following respects:
 - 46.1 The Shoreline Master Program allows for recreational use of private property. The CCSMP does not address boatlifts, jetski lifts or buoy lines.
 - 46.2 Watercraft lifts and buoys exist in high numbers on Lake Chelan. The lifts will not increase the number of watercraft utilizing the lake, but rather provide a place to moor the watercraft and protect them from wave action. The buoy line will be placed between the northwest property line and the new dock.
 - 46.3 The applicant has indicated that the purpose of the buoy line is to prevent consistent boat traffic from the adjacent rental property from trespassing and causing issues on the subject property. It should be noted that the public does have the right to navigate the water, regardless of ownership of lakebed.
 - 46.4 The cumulative impacts of watercraft lifts and buoy lines are minimal and remain consistent with the policies of the Shoreline Management Act.
- 47. The project is consistent with CCSMP Section 29.4.1 (a) in the following respects:
 - 47.1 The project area will be located on private property, in the vicinity of other properties with similar recreational in-water structures.
 - 47.2 The construction of a pier and installation of a boatlift, buoy and swim float will not affect statewide nor local interests.
- 48. The project is consistent with CCSMP Section 29.4.1 (b) in the following respects:
 - 48.1 This section of Lake Chelan carries a 'rural' shoreline designation, which allows for residential and recreational uses. This section of the lake is highly developed with residences, seawalls, and in-water structures.
 - 48.2 The subject property is developed with a partial seawall, crib dock, boat ramp, a storage shed with deck and a pump house with infrastructure. There is a low level of habitat on site due to the size of the lot and the lack of native vegetation.
 - 48.3 The proposed project will not impact the natural character of the shoreline.
- 49. The project is consistent with CCSMP Section 29.4.1 (c) in the following respects:
 - 49.1 The proposed development will be a long term benefit to the property by enhancing

the recreational use of the property and a benefit to the public by removing the old crib dock.

50. The project is consistent with CCSMP Section 29.4.1 (d) in the following respects:
 - 50.1 The proposed development will be located waterward of the OHWM. Habitat below OHWM consists of sloping, unvegetated rock and cobble.
 - 50.2 To the extent possible, all work will occurring the dry, to minimize the potential for erosion and turbidity and to reduce potential for impacts to water quality, fish and wildlife.
 - 50.3 The proposed development will not have a substantial impact on the resources and ecology of the shoreline.
51. The project is consistent with CCSMP Section 29.4.1 (e) in the following respects:
 - 51.1 The project is located on privately-owned property, with no public shoreline access.
 - 51.2 The project will not impact public access to the shoreline.
52. The project is consistent with CCSMP Section 29.4.1 (f) in the following respects:
 - 52.1 The subject property is under private ownership with no public access.
 - 52.2 The project will not affect public recreational opportunities, as the property is privately owned.
53. The project is consistent with CCSMP Section 29.4.2 in the following respects:
 - 53.1 Based on the above findings, the Hearing Examiner finds the project to be consistent with the intent and spirit of the principles outlined above.
54. The applicant and owner should be aware that additional zoning and critical area review shall be completed at the time of building permit submittal and may result in additional conditions.
55. Docks, boatlifts and buoys are prevalent on Lake Chelan for recreational use of residential property. Based on the existing development along the south shore of the lake, the proposed project will have minimal impacts to the shoreline environment and will be compatible with surrounding land uses.
56. The applicant and owner should be aware that additional zoning and critical area review shall be completed at the time of building permit submittal and may result in additional conditions.
57. Staff has 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, the Chelan County Shoreline Master Program, Chelan County Comprehensive Plan, and the Chelan County Code, staff recommended APPROVAL subject to recommended conditions of approval.
58. An open record public hearing after due legal notice was provided was initially held on March 6, 2019 and was continued to March 20, 2019.
59. 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.
60. Appearing and testifying on behalf of the applicant was Ann Hessburg. Ms. Hessburg testified that she was an agent authorized to appear and speak on behalf of the applicant. Ms. Hessburg indicated that the applicant concurred with the staff report findings and conclusions. The applicant had no objection to any of the proposed conditions of approval.
61. Testifying from the public was the following individual:

61.1 Terry Burnham. Mr. Burnham testified at the March 6, 2019 hearing. Mr. Burnham testified that he had no concerns with this particular shoreline permit but did have concerns with the variance, riparian variance and shoreline variance permit applications. Those applications are dealt with in a separate Decision.

62. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
63. 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 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.
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 and three Shoreline Conditional Use Permits are 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 and three Shoreline Conditional Use Permits 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 AND THREE SHORELINE CONDITIONAL USE PERMITS 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 25th day of March, 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 permit and two shoreline conditional use permits) as provided for in RCW 90.58.180 and Chapter 461-08 WAC, the rules of practice and procedure of the Shorelines Hearings Board.

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:
