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OCT 8 2020

CHELAN COUNTY  
COMMUNITY DEVELOPMENT

**SHORELINE MANAGEMENT PERMIT**

**ACTION SHEET**

**Application #:** SDP 20-015 / SV 20-004

**Administering Agency** Chelan County Department of Community Development

**Type of Permits:** ■ Shoreline Substantial Development Permit  
■ Shoreline Variance Permit

**Action:** ■ Approved □ Denied

**Date of Action:** October 7, 2020

**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:

Robert & Roxanne Duniway  
4428 Montana Circle W  
Seattle, WA 98199

This is an application for a shoreline substantial development and shoreline variance permit to construct a 635 square foot 'L' shaped dock, install a boatlift, a 64 square foot swim float and 2 mooring buoys. The dock would consist of 3 sections: a 6 foot x 45 foot dock, 4 foot x 45 foot dock, a 4 foot x 30 foot gangway and an 8 foot x 30 foot float with a 5 foot x 5 foot float extension landward of the float. The new boatlift would be installed on the uplake side of the pier section. The swim float would have a foot print of 8 feet x 8 feet. It would be installed approximately 50 feet waterward of the OHWM, with a water depth of approximately 14 feet. The mooring buoys would be located approximately 50-60 feet from the OHWM at the water depth of approximately 14-16 feet.

The subject property is only accessible via boat. There is no existing moorage on site, so access is limited. The development would provide year-round dock, moorage, and water access to the property via Lake Chelan. The increased length and area of the proposed dock is necessary in order for the dock to reach a water depth that allows for year-round use requiring a shoreline variance

Upon the following property: Boat access only, Manson, WA 98831.

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

The project would be within a shoreline of statewide significance (RCW 90.58.030). The project will be located within a 'natural' shoreline designation and is classified as a Shoreline of Statewide Significance, pursuant to WAC 173-20-100). The subject property is located in Chelan County, outside of an Urban Growth Area. The property is zoned Rural Residential/Resource 20 (RR20).

The following Shoreline Master Program provisions are applicable to this development: Sections 3, 4, 5, 6, and 7.

**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 development, the applicant must 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.
2. Pursuant to CCSMP Section 7.9, this shoreline permit shall be valid for the activities described within the JARPA and shown on the site plan of record, date stamped May 7, 2020, except as modified by this decision or other jurisdictional agencies.
3. Pursuant to the Mitigation Plan, date stamped May 7, 2020, the proposed plantings must be complete prior to the final inspection of the building permit; if at such time the plantings cannot be completed prior to final inspection, bonding as outlined in CCSMP Appendix B Section 6.5.6(2)(C), shall be required.
4. Pursuant to CCSMP Section 7.10.B, substantial progress toward construction for which a permit has been granted must be accomplished within two (2) years for the granting of the permit.
5. Pursuant to CCSMP 4.1 and RCW 27.53, prior to ground disturbing activities, consultation with the Washington State Department of Archaeology and Historic Preservation (DAHP) shall be required.
  - 5.1. Documentation as provided by DAHP that this condition has been satisfied or is no longer applicable may be provided at time of building permit submittal.
  - 5.2. An inadvertent discovery plan must be submitted with the building permit application and kept onsite during all land disturbing activities.
6. Pursuant to CCSMP 7.8, the granting of a 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.
7. Pursuant to CCSMP 7.8, upon final action of the hearing examiner as set forth in the provisions of this chapter, the department of building/fire safety and planning shall not accept filing of an application for substantially the same matter within one year from the date of the final denial of the application.
8. Pursuant to CCSMP 7.8, a variance shall become void three years after approval if no substantial construction has taken place or such other time period as established by the hearing examiner.

## FINDINGS OF FACT

1. The applicants/owners are Robert & Roxanne Duniway, 4428 Montana Circle W, Seattle, WA 98199.
2. The agent for applicant is Anne Hessburg, Grette Associates, LLC, 151 S. Worthen St., Suite 101 Wenatchee, WA 988014.
3. The project location is boat access only, Manson, WA 98831. There is no road access to the site. Access is only by boat. The property is located approximately 0.7 miles downlake from the Stehekin Landing, on the north shore.
4. The parcel number for the subject property is 32-18-06-420-050.
5. The legal description for the subject property is: Lot 1 of SP 2016.
6. The subject property is located in Chelan County, outside of an Urban Growth Area.
7. The Comprehensive Plan designation and zoning for the subject property is Rural Residential/Resource 20 (RR20).
8. The property consists of moderately sloping upland leading a moderately to steeply sloping, eroding shoreline. The proposed dock location is just own lake of existing cabin, where there is a trail to the shoreline. Up and downlake of the project site consists of shrub steppe vegetation. There is no riparian vegetation adjacent to the shoreline. There is a low level of fish and wildlife habitat on site due to the size of the property, erosion along the shoreline and native vegetation. Below OHWM habitat consists of moderately sloping unvegetated cobble and sand.
9. Property to the north: Recreation use and zoned as Rural Public Lands (RP) and Commercial Forest Lands (FC).
10. Property to the south: Lake Chelan, a 'natural' shoreline designation, and zoned Rural Residential/Resource 20 (RR20).
11. Property to the east: Recreation use and zoned Rural Public Lands (RP) and Commercial Forest Lands (FC).
12. Property to the west: Lake Chelan.
13. The subject property is only accessible via the lake by boat. There is no existing moorage on site, so access is limited. The property owner would like to obtain year-round access to their property. The proposed development would provide year-round dock, moorage, and water access to their property via Lake Chelan. The length and area of the proposed dock is necessary in order for the dock to in a water depth that allows for year-round use, and to have a gangway that does not become too steep and dangerous during the low lake level.
14. The dimension standards for piers/docks on Lake Chelan indicates the length of a dock shall not exceed 55 feet or such that water depth at the waterward edge of dock is sufficient for safe boat

moorage (minimum 12 feet in depth). The standard area for piers/docks is 320 square feet for single use docks. The number may be increased by 6 feet for each additional foot of length beyond 55 feet necessary to reach 12 feet of water depth.

15. Construction would begin upon receipt of all permits and would end within 12 months from start date.
16. The project is required to comply with CCC Chapter 7.35, Noise Control.
17. Visual impacts would be from the water and surrounding properties.
18. The Notice of Application and Environmental Review 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 June 3, 2020, with comments due July 3, 2020. Agency comments are considered in this discussion and, when appropriate, incorporated as Conditions of Approval. All comments are included in the file of record. The following is a list of Agencies who received notice and the date comments were received:

Agencies Notified	Response Date	Nature of Comment
Chelan County Fire Marshal	None	
Chelan County Building Department	June 3, 2020	Development must comply with International Building Codes.
Chelan County PUD No. 1	September 4, 2019	Chelan County PUD governs land lying waterward of the 1100 foot Easement Elevation line and has the right to permanently flood to that elevation.
WA Dept. of Ecology	None	
WA Dept. of Fish and Wildlife	None	
WA Dept. of Archaeology and Historic Preservation	June 16, 2020	The development is within a high potential for archaeological resource. An archaeological survey of the development site is recommended.
Yakama Nation	None	
Confederated Tribes of the Colville Reservation	June 3, 2020	The development is within a high potential for archaeological resource.

19. No public comments were received.
20. The application materials were submitted on May 7, 2020.
21. A Determination of Completeness was issued on May 29, 2020.
22. The Notice of Application was published on June 3, 2020.

23. The Notice of Public Hearing was provided on September 22, 2020.
24. 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 completed, and an optional Determination of Non-Significance (DNS) was issued on August 10, 2020. The SEPA Checklist and DNS are included within the file of record and adopted by reference.
25. The Comprehensive Plan has been reviewed. Specifically, the goals and policies related to the Rural Residential/Resource 20 (RR20) Comprehensive Plan designation for consistency with residential land uses.
26. The development is consistent with Goal CL 1 of the Resource Element, Identify and protect critical areas from adverse environmental impacts while providing for reasonable use of the property.
27. The development is consistent with the Rural Residential/Resource 20 purpose statement: To allow for low intensity rural development, agricultural and forestry uses which do not require the extension of services or infrastructure. These areas provide greater opportunities for protecting sensitive environmental areas and creating open space typical of a rural setting.
28. Uses appropriate for these areas include: open spaces, residential, agriculture, and forestry. Additional uses may be considered with supplemental provisions. These provisions shall address performance standards, impacts to the surrounding area, and be consistent with the goals and policies of the comprehensive plan. Such uses may include: natural resource support facilities and series, mineral resource activities, intensification of exiting small scale recreational or tourist uses that rely on a rural location or setting, but that do not include a new residential component, intensification of development on lots containing existing isolated nonresidential used, home occupations, bed and breakfasts, and community facilities.
29. The Hearing Examiner finds that the project, as conditioned, is consistent with the Chelan County Comprehensive Plan.
30. Wetlands: According to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property does not contain wetlands.
31. Fish and Habitat: According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject property contains protected Northern Goshawk and waters of the state, which are all considered Class II Fish and Wildlife Habitat Conservation Area. Therefore, Chelan County Shoreline Master Program appendix B applies to the development.
32. Floodplain: According to the Federal Emergency Management Agency, FIRM panel # 5300150300A, there is no floodplain on the subject parcel. CCSMP appendix B do not apply to the development.
33. Geologically Hazardous Area: The County GIS data map does show known geologically hazardous conditions on the subject property. Therefore CCSMP appendix B Geologically Hazardous Areas Overlay District, does apply to the development. A geological site assessment would be required with building permit submittal.
34. Streams: According to the Washington State Department of Natural Resource Maps, the subject property does contain any streams.
35. Pursuant to CCSMP Section 4.1, developers shall notify local governments of any possible archaeological materials uncovered during excavation.

- 35.1 Based on comments received from the Washington Department of Archaeology & Historic Preservation dated June 16, 2020, the subject property is located within an area of high probability for containing cultural resources. A cultural resource survey is requested.
- 35.2 Developers and property owners must immediately stop work and notify the County, the Washington State Department of Archaeology and Historic Preservation, and affected tribes if archaeological resources are uncovered during excavation.
- 35.3 Applicants must submit an Inadvertent Discovery Plan prior to commencing any development authorized by this SMP. A copy of the plan must be kept on site during ground disturbing activities.
36. This property is located along Lake Chelan within the 'natural' shoreline designation. The proposed recreational use is permitted in this designation. However, a shoreline variance is required for construction of a dock structure waterward of the OHWM to a water depth greater than 12 feet to ensure year round access.
37. CCSMP Section 7.5.2, Shoreline Substantial Development Permits: Review Criteria: In order for the permit to be approved, the decision maker must find that the proposal is affirmatively consistent with the following: (A) How is the proposal consistent with the policies and procedures of the Act (RCW 90.58)? (B) How is the proposal consistent with the provisions of Chapter 173-27 WAC, Shoreline Management Permit and Enforcement Procedures? (C) How is the proposal with this SMP?
- 37.1 The provisions of the SMP and WAC have been met through the adoption of CCSMP. The appropriate CCSMP requirements are addressed below. According to JARPA, question 6(g), the fair market value of the development is \$80,000. The development is not exempt from the substantial development permit requirements.
- 37.2 The development is consistent with the provisions of the SMA, WAC and CCSMP.
38. Shoreline Residential Regulations 5.16 - D. Accessory uses. Residential accessory uses or appurtenances shall not be located in required shoreline buffers unless specifically authorized by this SMP or through a Shoreline Variance permit.
- 38.1 The applicant is proposing a pier, boat lift and mooring buoy. The pier would extend approximately 80 feet waterward of the OHWM to depth of approximately 20 feet with approximately 635 square feet of overwater coverage.
- 38.2 Pursuant to CCSMP Table 5.14-a for dimension standards on Lake Chelan, 'the length of the dock shall not exceed 55 feet or such that water depth at the waterward edge of dock is sufficient for safe boat moorage.' The area for docks is '320 square feet for single use docks. This number maybe increased by 6 square feet for each additional foot of length beyond 55 feet necessary to reach 12 feet of water depth. It is recommended that the total area is not exceed 450 square feet.'
- 38.3 The proposed development does not meet the dimension standards on Lake Chelan being as the applicant would like to access the property year round. Therefore, a shoreline variance is required.
39. CCSMP Section 7.8 Review Criteria for Variance Permits - CCSMP Section 7.8.1. The purpose of the variance is to grant relief to specific bulk or dimensional requirements set forth in this Shoreline Master Program where there are extraordinary or unique circumstances relating to the

property such that the strict implementation of this Shoreline Master Program would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited.

40. 7.8.2 Review Criteria - Shoreline Variances may be authorized, provided the applicant can demonstrate compliance with the following criteria or as thereafter amended in WAC 173-27-170. Applicants are encouraged to consider the options, such as buffer averaging or buffer reduction and optimally implement mitigation sequencing prior to applying for a Shoreline Variance.
- 40.1 General provisions. Shoreline Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020.
- 40.2 Shoreline variances landward of the OHWM. Shoreline Variance permits for development and/or uses that will be located landward of the OHWM, as defined in RCW 90.58.030(2)(c), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant demonstrates affirmatively all of the following:
- 40.2.1 How would the strict application of the bulk, dimensional or performance standards set forth in this SMP preclude or significantly interfere with reasonable use of the property?
- 40.2.2 The dimensional standards in the CCSMP limits the length of the dock to the minimum distance waterward from the OHWM to the point that 12 feet of water depth is reached. The subject property is only accessible by boat, the dock needs to be constructed in water depth that would allow the property owners to access their property all year round, even during maximum draw-down events on Lake Chelan.
- 40.2.3 The fluctuating water levels of Lake Chelan results in the need for a long pier and gangway so both can be out in deep water and can roll on the floating portion of the dock at all water levels.
- 40.2.4 The dock and pier must reach far enough into the lake that it does not ground out due to the high wave action of the long fetch.
- 40.2.5 The applicant is requesting to construct a pier, gangway and dock. To meet the allowed 12 foot water depth the pier/dock must have a greater length than permitted.
- 40.3 How is the hardship described in Section 7.8.2.B.1 above specifically related to the property, and is the hardship the result of unique conditions such as irregular lot shape, size, or natural features and the application of this SMP, and not for example from deed restriction or the applicant's own actions?
- 40.3.1 The hardship is specifically related to the physical characteristic of the subject property. The lack of an established road leading to the subject property and the steepness of the property at and below the OHWM.
- 40.3.2 The hardship is specifically related to the physical characteristic of the subject property.
- 40.4 How is the design of the project compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this SMP, and will the project design not cause adverse impacts to the shoreline environment?

- 40.4.1 The shoreline environment designation is 'natural', which permits recreational uses and structures. The proposed development would be compatible with other permitted activities in the surrounding areas which include docks, piers, residences and recreational uses. The development would have no adverse effects on adjacent properties since the pier and dock would be located in front of the applicant's property
  - 40.4.2 The proposed pier and dock is compatible with the uses and structures in the vicinity and within the 'natural' shoreline jurisdiction, which allows structures to moor boats.
- 40.5 How will the variance not constitute a grant of special privilege not enjoyed by the other properties in the area?
- 40.5.1 Piers and docks along Lake Chelan in the vicinity of the development contain residential and recreational development. The applicant is requesting to increase the length and overwater coverage of the pier and dock to meet the minimum water depth of 12 feet, which requires a shoreline variance.
  - 50.5.2 The proposed variance request would allow the property owner to safely access the property year round. This would not grant a special privilege as properties along this section of shoreline have pier, docks and residences.
- 40.6 How is the variance requested the minimum necessary to afford relief?
- 40.6.1 The dock, pier and gangway have been minimized to be the least impacting as possible while still providing adequate moorage.
  - 40.6.2 The length and area of the proposed dock is the minimum necessary in order for the dock to be in a water depth that allows for year-round use, and to have a gangway that does not become too steep and dangerous during the low lake level.
- 40.7 How will the public interest suffer no substantial detrimental effect?
- 40.7.1 Much of the shoreline of upper Lake Chelan is publicly owned wilderness and would remain undeveloped. The relatively small area of privately development would be immeasurable compared to the large areas of property serving the public interest.
  - 40.7.2 The proposed single-use pier and dock would not have a detrimental effect on the public interest or use of the shoreline, as the development would occur on private property.
41. Shoreline Variance permits for development and/or uses that will be located waterward of the OHWM, as defined in RCW 90.58.030(2)(b), or within any wetland as defined RCW 90.58.030(2)(h), may be authorized provided the applicant demonstrates affirmatively all of the following:
- 41.1 How will the public rights of navigation and use of the shorelines not be adversely affected?
    - 41.1.1 The proposed development would occur on private property and would have no effect on public use of the shoreline.



- 41.1.2 The proposed development is for private use, on private property. The public interest would not suffer substantial detrimental effect.
42. Cumulative impacts. In the granting of all Shoreline Variances Permits, consideration shall be given to the cumulative impact of additional request for like actions in the area. The County may require that the applicant submit a cumulative impact analysis prepared by a qualified professional for subject of the variance:
- 42.1 Demonstrating no substantial adverse effects to the shoreline environment and achievement of no-net-loss of shoreline ecological function. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of the Act and shall not cause substantial adverse effects to the shoreline environment.
- 42.1.1 The Shoreline Master Program allows for residential and recreational development of private property.
- 42.1.2 Based on the JARPA 8(d), the development would entail a maximum of approximately 824 square feet in new overwater coverage. Pursuant to USACE requirements, the dock and swimfloat's overwater coverage would be mitigated through the proposed grating over the entire structure. The dock would also be mitigated for via a proposed native vegetation planting plan. The planting plan would be accomplished by planting five (5) trees and thirty-five (35) shrubs, for a total of 639.8 square feet.
- 43.1.3 The cumulative impacts of granting such variances are minimal and remain consistent with the policies of the Chelan County Shoreline Master Program.
44. An open record public hearing after due legal notice was held via Zoom video conferencing on October 7, 2020.
45. Appearing and testifying on behalf of the applicant was Anne Hessberg of Grette Associates. Ms. Hessberg testified that she was an agent authorized to appear and speak on behalf of the property owner and applicant. Ms. Hessberg indicated that the applicant had no objection to any of the proposed Conditions of Approval.
46. No member of the public testified at this hearing.
47. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
48. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

## CONCLUSIONS OF LAW

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. 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 Residential/ Resource 20 (RR20) 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 development is consistent with the provisions of the SMA, WAC and CCSMP.
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 proposed single-use pier and dock would not have a detrimental effect on the public interest or use of the shoreline, as the development would occur on private property.
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 Shoreline Variance Permit 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 the Shoreline Variance Permit 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 SHORELINE VARIANCE PERMIT 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 7th day of October, 2020.

CHELAN COUNTY HEARING EXAMINER



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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 shoreline conditional use 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.**

**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.

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**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:

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