

SHORELINE MANAGEMENT PERMIT

ACTION SHEET

Application #: CUP 2021-413/ SCUP 2021-414/SV 2021-415
Administering Agency Chelan County Department of Community Development

Type of Permits:

- Conditional Use Permit
- Shoreline Variance
- Shoreline Conditional Use Permit

Action:

■ Approved ☐ Denied

Date of Action: July 25, 2022

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 & Gayle Holeton
PO Box 365
Leavenworth, WA 98826

These are applications for a Conditional Use Permit, Shoreline Conditional Use Permit and a Shoreline Variance for the construction of a new single-family residence within the Icicle Valley Design Review District. A concrete foundation has been completed and inspected and currently is 50 ft. landward of the OHWM of Icicle Creek. Icicle Creek has a shoreline designation of 'natural' which holds a 150' setback from the OHWM. To permit the partially constructed building and finished construction a shoreline conditional use permit and a shoreline variance are necessary. Single-family residences within the Icicle Valley Design Review District Require a Conditional Use Permit per Chelan County Code (CCC) 11.72.050. The subject property is zoned Rural Residential/Resource 20 (RR20).

The project would be within a shoreline of statewide significance (RCW 90.58.030). The project will be located 50 ft. landward of the OHWM of Icicle Creek. Icicle Creek has a shoreline designation of 'natural' which holds a 150' setback from the OHWM.

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.

I. 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. 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.
2. Pursuant to CCC Section 11.93.080, the granting of a conditional use permit and the conditions set forth runs with the land. Compliance with the conditional use permit is the responsibility of the current owner of the property, whether that is the applicant or a successor.
3. Pursuant to Chelan County Code Section 11.93.040(10), the final Conditional Use Permit shall be in conformance with the submitted application of record, date stamped September 9, 2021 except for the following: the updated building plans, date stamped April 27, 2021. The recommendations of the Geologic Assessment, date stamped June 10, 2022 or as amended by this decision.
4. Pursuant to the requirements of the International Building Code and International Fire Code, a Chelan County Residential Building Permit shall be required for the proposed development.
5. Pursuant to Chelan County Code Section 11.93.040(4), detrimental impacts on the natural environment and productive use of surrounding natural resource lands shall be mitigated or avoided.
6. Pursuant to Chelan County Code Section 11.93.040(8) and Chapter 7.35, the applicant shall ensure that all noise regulations are met.
7. Pursuant to Chelan County Code Section 11.88.080, security lights or any exterior lighting shall be low-intensity, non-flashing and designed to project toward the property or shall be shielded to keep light from directly projecting over property lines.
8. Pursuant to RCW 27.53.020, if the applicants or their agents discover previously unknown historic or archeological 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.
9. An inadvertent discovery plan must be submitted with the commercial building permit application and kept onsite during all land disturbing activities.
10. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
11. Pursuant to Chelan County Code Section 11.93.110, a conditional use permit shall become void if not acted upon, within three years after approval or such other time period as established by the hearing examiner. The applicant may request a one-year extension, to be reviewed administratively, if the applicant submits a written request with community development thirty days prior to expiration.
12. Pursuant to Chelan County Code Section 11.93.090, upon final action of the hearing examiner to deny an application for a conditional use permit, the department shall not accept filing of an application for substantially the same matter within one year from the date of the final denial of the application.

13. Pursuant to Chelan County Code Section 11.93.120, action of the Hearing examiner is final, unless appealed pursuant to the judicial appeal provisions of Title 14 of the Chelan County Code.
14. Pursuant to CCC Section 11.95.050, in any case where a variance is granted under the terms of this title, no building or other permit shall be issued until after the end of the appeal period allowed in Title 14 of this code. An appeal of the decision shall automatically stay the issuance of building or other permits until such appeal has been completed.
15. Pursuant to CCC Section 11.95.060, 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.
16. Pursuant to CCC Section 11.95.070, 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.
17. Pursuant to CCC Section 11.95.080, 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.
18. Class A roofing/noncombustible roof covering, as defined in the International Building Code, shall be used on all new construction in all areas of Chelan County.
19. New construction permitted after February 1, 2021 is subject to WAC 51-54A-8200 International Wildland-Urban Interface Code. These include possible defensible space (Firewise) requirements for the property landscape and possible construction requirements for new buildings. All buildings that require a building permit shall comply with the portions of the International Wildland-Urban Interface Code adopted by the State of Washington and Chelan County.

II. FINDINGS OF FACT

1. The applicant/owners are Robert & Gayle Holeton, PO Box 365, Leavenworth, WA 98826.
2. The agent for applicant is Ryan Walker, Grette Associate, LLC, 151 S. Worthen St., Suite 101 Wenatchee, WA 98801.
3. The project location is 7003 Icicle Road, Leavenworth, WA 98826.
4. The parcel number for the subject property and legal description is 24-17-27-000-050, Lot 2 of CE 2014-278 16.7 Acres.
5. The subject property is located in Chelan County, not within an urban growth area.
6. The property is located within the Rural Residential/Resource 20 (RR20) zoning district and comprehensive plan designation, and within the Icicle Valley Design Review Overlay District.
7. The property is currently in residential use. Building permits for this property have been issued per the County Assessor's records: BP 130280 – Single-Family Residence expired. The Applicant must submit a new building permit application.
8. Site Information: The property slopes downward from the rear property line to the front property line and Icicle Creek with an existing partially constructed garage foundation.
 - 8.1 North: Rural Residential/Resource 20 (RR20) zoning designation;

- 8.2 South: Commercial Forest Lands (FC) zoning designation;
 - 8.3 East: Rural Residential/Resource 20 (RR20) zoning designation;
 - 8.4 West: Rural Residential/Resource 20 (RR20) zoning designation
9. An Aquifer Recharge Disclosure Form is not required for single-family residences and their associated developments, per CCC 11.82.060. The property is not located within a wellhead protection area.
 10. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject property does contain priority habitat for Mule Deer, riparian habitat, and wetlands. Therefore, the provisions of Chelan County Code Chapter 11.78 Fish and Wildlife Overlay District, do apply.
 11. The subject property is located on Icicle Creek within the natural and conservancy shoreline jurisdictions. Therefore, the provisions of the Shoreline Master Program (SMP) do apply.
 12. Pursuant to Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map panel no. 5300150800A, there is known floodplain on the subject property. Therefore, the provisions of CCC, Chapter 11.84, Frequently Flooded Areas Overlay District, do apply.
 13. According to the Chelan County GIS mapping, the property does contain geological hazards for erosive soils. Therefore, the provisions of Chelan County Code Chapter 11.86 Geologically Hazardous Areas Overlay District, does apply to this development. A geo assessment performed by Nelson Geotechnical Associates, INC date stamped June 10, 2022 was submitted.
 14. No comments were received stating concerns about cultural resources being possibly located on the subject property.
 15. Construction Phasing/Timing: Applicant plans to begin construction upon approval and receipt of all necessary permits.
 16. Traffic Circulation: According to the updated site plan of record, dated September 9, 2021, the property is accessed by a private access easement detailed under AFN 620912.
 17. Domestic Water: Water to the subject property would be supplied by a single use well, as noted on the updated site plan of record dated September 9, 2021 and application materials.
 18. Power: Chelan County PUD provides electrical services to the subject property.
 19. Sanitation: Sanitation is supplied by an off-site septic system, located on Parcel No. 241727000060, adjacent to the east of the subject property.
 20. Noise: Noise is similar to other residential uses in the vicinity. The development must comply with CCC, Chapter 7.35 Noise and RCW 70.107.
 21. Visual Impact: According to the updated site plan of record, date stamped September 9, 2021, the proposed garage would not visually impact neighboring properties.
 20. The Notice of Application was referred to surrounding property owners within 300' (excluding 60' of right-of-way), jurisdictional agencies and departments of the County. These agencies and surrounding property owners were notified on January 29, 2022 with comments due February 28, 2022. Agency comments are considered in the staff report and when appropriate, associated recommended Conditions of Approval are included. The following is a list of Agencies who received notice and the date comments were received:

Agencies Notified	Response Date
Chelan County Public Works	None
Chelan County Building	May 11, 2022
Chelan County Fire Marshal	None
Chelan County PUD	None
Dept of Archaeology & Historic Preservation	None
Confederated Tribes of Colville	None
Yakama Nation	None
Department of Ecology	February 24, 2022
Chelan-Douglas Health District	None

23. No public comments were received.
24. Application Submitted: September 9, 2022
25. Determination of Completeness issued: January 25, 2022
26. Notice of Application: January 29, 2022
27. Notice of Public Hearing: July 7, 2022.
28. SEPA Environmental Review. The proposed structure is categorically exempt from SEPA review per Washington Administrative Code (WAC) 197-11-800(1)(b)(3).
29. Chelan County Comprehensive Plan - Natural Systems: Icicle Valley Goals and Policies:
 - 29.1 Goal NS 2: Icicle River Valley: Encourage retention of the scenic character and environmental quality of the Icicle Valley:
 - 29.1.1 FACT: The subject property is within the Icicle Valley Design Review Overlay District, which requires the proposed single-family residence to address the Icicle Design Review Guidelines. These review guidelines seek to preserve the scenic character and environmental quality of Icicle Valley.
 - 29.1.2 HEARING EXAMINER FINDING: Based on the site plan of record and application materials, the proposed development, as conditioned, would retain the scenic character and environmental quality of the Icicle Valley by conforming to Icicle Design Review Guidelines.
30. Rural Residential/Resource 20 (RR20) Lands:
 - 30.1 Purpose: 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.
 - 30.2 Uses appropriate for these areas include: open space; 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 services; mineral resource activities; intensification of existing 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 uses; home occupations; bed and breakfasts; and community facilities.

30.2.1 FACT: The applicant is requesting a proposed single-family residence within the RR20 zoning designation.

30.2.2 HEARING EXAMINER FINDING: The proposed development meets the intent of the goals and policies of the Comprehensive Plan for residential uses.

31. Chelan County Code 11.08.020 – Standards:

Development Standards	RR-20
Minimum Setback Distances.	
Front Yard	25' from the front property line or 55' from the street centerline, whichever is greater.
Rear Yard	20' from rear property line
Side Yard	5' from side property line
Maximum Lot Coverage	Buildings and structures shall not occupy more than 35% of the lot area.
Maximum Building Height	35'

32. Chelan County Code 11.93.040 - Conditional Use Permit Criteria:

32.1 All criteria required for a specific use by this chapter can be satisfied.

32.1.1 FACT: Criteria for the proposed single-family residence has been addressed below.

32.1.2 HEARING EXAMINER FINDING: Based on review of the application materials submitted, the criteria for the proposed single-family residence, as conditioned, can be satisfied.

- 32.2 A finding can be made that the design standards of the zoning district within which the lot is located, critical area regulations, and all other applicable development standards and regulations can be met.
 - 32.2.1 FACTS: The site plan of record, date stamped September 8, 2021, demonstrates the existing and proposed development would meet applicable development standards in CCC Section 11.08.020. CUP 1998-013A, 014A and 015A which was previously approved on March 18, 2003, reduced the Natural shoreline buffer to fifty (50) feet. Existing and proposed development would meet applicable shoreline setbacks.
 - 32.2.2 Portions of the subject property are within a geologically hazardous area and have been identified as possibly having erodible soils. A geologic assessment was performed by Nelson Geotechnical Associates, INC, dated stamped June 10, 2022.
 - 32.2.3 Lastly, Chelan County GIS mapping shows that the subject property is in shoreline habitat areas located on the subject property to Icicle Creek. No comments regarding the critical areas on the property were received from Department of Fish and Wildlife.
 - 32.2.4 HEARING EXAMINER FINDING: Based on the application materials, the proposed development meets the zoning standards and other applicable development standards.
- 32.3 Compatibility with the adjacent uses and the protection of the character of the surrounding area.
 - 32.3.1 FACTS: Pursuant to Chelan County Code 11.72.050, the Icicle Valley Design Review Overlay District allows for single-family dwellings and their accessory uses as conditional uses. The adjacent properties to the east and to the west are within the Icicle Valley Design Review Overlay District as well and both of these properties are currently used for residential purposes. The single-family residences that currently exist on both of these properties were permitted under CUP's 21-081 and the existing residence on the subject property was permitted per CUP 1998-14.
 - 32.3.2 HEARING EXAMINER FINDING: Based on application materials, the proposed single-family residence is compatible with the residential uses of the surrounding area.
- 32.4 Detrimental impacts on the natural environment and productive use of surrounding natural resource lands can be mitigated or avoided.
 - 32.4.1 FACTS: The subject property is not identified as a classified resource land pursuant to the Chelan County Comprehensive Plan. The subject property contains critical habitats and is located within an area that is shown to have erosive soils per Chelan County GIS mapping.
 - 32.4.2 HEARING EXAMINER FINDING: Based on the application materials submitted, the proposed development would not be detrimental to the natural environment.
- 32.5 No conditional use permit shall be issued without a written finding that:
 - 32.5.1 After adequate opportunity for review and comment, all providers of water sewage disposal, schools, and fire/police protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
 - 32.5.1.1 FACT: Chelan County provided a Notice of Application to the Chelan-Douglas Health District, the Chelan County Fire Marshal, and Chelan

- County Fire District #3. The Cascade School District was not noticed because no additional residential capacity is proposed.
- 32.5.1.2 HEARING EXAMINER FINDING: Through the application materials submitted and the comments from service providers received, the applicants have demonstrated that there are adequate services for the proposed single-family residence.
- 32.5.2 No county facilities will be reduced below adopted levels of service as a result of the development.
- 32.5.2.1 FACTS: The proposed use is not anticipated to result in county facilities being reduced below adopted levels of service. No comments were received from Chelan County Public Works regarding adopted levels of service and no increase in Average Daily Traffic (ADT) on Icicle Road are anticipated as a result of the proposed garage.
- 32.5.2.2 HEARING EXAMINER FINDING: As conditioned, the proposed use would not result in county facilities being reduced below adopted levels of service.
- 32.6 The proposed use shall not result in undue adverse impacts affecting the public health, safety and welfare.
- 32.6.1 FACTS: The existing and proposed development are supplied by an existing off-site septic system for sanitation and an on-site well for water.
- 32.6.2 HEARING EXAMINER FINDING: As conditioned, the proposed use is not anticipated to result in an adverse impact on public health, safety and welfare.
- 32.7 A finding shall be made that adequate provisions have been provided for roads, ingress and egress, stormwater, parking and loading, domestic and irrigation water, sanitary facilities, power, fire protection, and other necessary facilities, improvements or services consistent with the requirements of Title 11 and 15 of the Chelan County Code. Primitive or forest service roads may be considered appropriate access as provided in Section 11.88.070.
- 32.7.1 FACTS:
- Roads, ingress and egress: The subject properties are accessed by Icicle Road.
 - Stormwater: The applicant shall comply with Chelan County Code Title 13; Chelan County Stormwater Guidelines and Procedure.
 - Parking and Loading: The proposed single-family residence with attached garage would have two parking spaces on the first floor.
 - Domestic and Irrigation Water: Domestic water is supplied by an existing on-site well.
 - Sanitary Facilities: Sanitary facilities are supplied by an existing on-site septic system.
 - Power: Power is provided by Chelan County PUD.
- 32.7.2 HEARING EXAMINER FINDING: All necessary facilities, improvements and services are consistent or can be conditioned per the requirements of Titles 11, 13 and 15 of the Chelan County Code.
- 32.8 Noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties and to the vicinity can be mitigated or avoided.
- 32.8.1 FACTS: Based on application materials, the proposed use is a single-family residence. The proposed use of the subject property would not impact adjacent properties in the vicinity with noise, light, heat, steam, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards, or any other related impacts.

- 32.8.2 HEARING EXAMINER FINDING: Based on application materials, noise, light, heat, steam, erosion, water quality, glare, odors, air pollution, smoke, wastes, dust, vibration, electrical disturbance, physical hazards and related impacts on adjacent properties can be avoided or mitigated as conditioned.
- 32.9 The granting of the proposed conditional use permit is consistent and compatible with the intent, goals, objectives and policies of the comprehensive plan, and any implementing regulation.
 - 32.9.1 FACT: The proposed single-family residence would be consistent with the goals and policies of the Chelan County Comprehensive Plan.
 - 32.9.2 HEARING EXAMINER FINDING: Based on application materials, the proposed single-family residence is consistent with the Chelan County Comprehensive Plan.
- 33. Icicle Design Review Guidelines - The Icicle Design Review Guidelines are intended to establish a design criterion for development activities specified in the Icicle Valley Design Review Overlay District (IVDROD). Those development activities include road construction, clear cuts and structural developments. Modifications to the existing natural environment should, as much as possible, repeat form, line, color, and texture common to the surrounding landscape. Changes in the natural landscape can occur, but should remain visually subordinate to the surrounding environment. The Icicle Valley is recognized for its visual quality and each development should be evaluated on the site's ability to accept alteration without losing its inherent visual character.
 - 33.1 Site Location:
 - 33.1.1 Each individual site should utilize the best possible location in siting the structure. Existing timber stands and brush should be taken advantage of as much as possible for screening purposes.
 - 33.1.2 Natural topographic features such as benches, rock outcrops and any other unique land forms should be utilized in the site selection. Structures located at the far edge of forest clearings should be placed far enough from the road that they become an integral part of the landscape rather than a dominate feature.
 - 33.1.3 The structure should be oriented so that the gable end faces or is perpendicular to the primary road.
 - 33.1.4 FACTS: As stated in the application materials, there is no other location feasible to build a residence on the subject property that would not be within the 150 ft. Natural shoreline buffer. The existing foundation is located at the bottom of a steep, north facing mountain side. Leveling a building site would be impossible due to the steep slopes, bedrock and geotechnical safety issues. The IDROD guidelines require minimizing modifications to the environment as much as possible.
 - 33.1.5 HEARING EXAMINER FINDING: Based on application materials submitted, the proposed development is consistent with Site Location guidelines.
 - 33.2 Architectural Design:
 - 33.2.1 Structural design should emphasize vertical alignment through type of siding, roof line and architectural design which conforms with existing form, line, color and texture of the surrounding environment.
 - 33.2.2 Natural earth tone colors should be utilized for siding, trim and metal roofing. Where possible, construction should utilize wood products or native materials (log construction, stone etc.).
 - 33.2.3 Broken rooflines with a steep pitch are encouraged for all residential structures.
 - 33.2.4 Building heights shall conform to the underlying Forest Resource (FC) zoning district and/or the shoreline conservancy environment requirements.

- 33.2.5 FACTS: The applicant is proposing g to construct a modest sized residence with a 1,850 sq. ft. footprint. The sloped gable roof and natural wood siding would blend with the natural surroundings. The structure would not exceed the 25 ft tall and would appear much shorter due to the foundation being excavated into the ground.
- 33.2.6 HEARING EXAMINER FINDING: Based on the updated site plan of record, the proposed development is consistent with Architectural Design guidelines.
- 33.3 Vegetation.
 - 33.3.1 As much naturally occurring vegetation should be retained as construction allows. A natural vegetation buffer between the structures and road corridor or shoreline should be maintained to produce a filtered effect.
 - 33.3.2 Introduced vegetation or landscaping should be native or native appearing. Exposed manicured lawns should be screened in such a fashion to blend with the natural landscape.
 - 33.3.3 When the building site is visible from the primary road on-site grading should be kept to a minimum, and generally for construction purposes only. Artificial forms, such as cut banks, earth mounds, rock or slash piles, should be avoided when grading, clearing, landscaping or locating driveways.
 - 33.3.4 Other than the vegetation cleared for fire purposes, layering of vegetation around the building site by diversity of species and age classes is encouraged. Layering is accomplished by selective tree cutting to achieve a mixture of conifers with both mature over and under stories, hardwoods, and dense shrubberies.
 - 33.3.5 FACTS: Existing vegetation on the subject property would act as a natural buffer between the proposed single-family residence and Icicle Road. There are existing trees and shrubs between the proposed single-family residence and the Icicle Road corridor. Any introduced vegetation would need to be native or native appearing. Proposed landscaping is minimal due to the single-family residence being built into a hillside and all of the existing vegetation on the property already provides sufficient screening of the proposed single-family residence.
 - 33.3.6 HEARING EXAMINER FINDING: The Hearing Examiner finds that a landscaping plan is not necessary for the proposed single-family residence due to the existing vegetation on the subject property providing sufficient screening from Icicle Road and adjacent properties. In addition, the applicant would need to comply with WAC 51-54A-8200, which is the International Wildland-Urban Interface Code. These include possible defensible space (Firewise) requirements for the property landscape.
- 33.4 Setback.
 - 33.4.1 Setback from road or shoreline should depend on density of vegetation, steepness of slope, and viewing distance.
 - 33.4.2 Staggering setbacks from adjacent structures within viewing distance is encouraged. A natural vegetation buffer between those structures should be maintained.
 - 33.4.3 Structures should be located to maintain sufficient tree canopy to minimize visual impact of structures from higher vantage points.
 - 33.4.4 FACTS: Setbacks used are based on zoning standards of the RR20 zoning district and the reduced natural shoreline buffer mentioned above. The location of the foundation was chosen based on the steepness of the slope. The adjacent structures are 330 ft. and 580 ft away and screened by vegetation and boulders so they are not visible for each other. Therefore, there are no visual impacts to any structures at higher vantage points.

- 33.4.5 HEARING EXAMINER FINDING: Based on application materials, the proposed development is consistent with Setback guidelines.
- 33.5 Private Access Drives.
 - 33.5.1 Private drives serving more than one building site are encouraged. The number of private driveways accessing the primary road should be limited.
 - 33.5.2 While the approach of the access drive to the primary road should at a right angle, curve-linear or winding driveways to the building site should be utilized. Vegetation removal should only be done to accommodate the width of the driveway.
 - 33.5.3 Grades for private drives should not exceed fourteen (14) percent. Drains dips are encouraged in lieu of culverts where slopes permit, except at the intersection of a primary road.
 - 33.5.4 A house identification number sign, may be placed along the Icicle Road for all residential structures. It will be constructed of natural materials such as wood or stone. Identification signs are to be eight (8) by sixteen (16) inches in size with a brown background with ivory numbers.
 - 33.5.5 FACTS: The driveway winding down the slope from Icicle Road serving three (3) residences is pre-existing and less than 14 percent grade, no vegetation removal would be necessary. Appropriate house identification numbers would be installed as required by the Chelan County Fire Marshal and Fire District No. 3.
 - 33.5.6 HEARING EXAMINER FINDING: Based on application materials, the proposed development is consistent with Private Access Drives guidelines.
- 33.6 Water Quality.
 - 33.6.1 Soil test holes may be required by the Chelan-Douglas Health District. These test holes may be required during the period of normal seasonal high-water runoff. Soil test results will be used to determine the porosity of the soil, and the possible need for setbacks from surface water or wells of more than one hundred (100) feet.
 - 33.6.2 Complete plans for septic tank and acceptable water system shall be submitted with all applications.
 - 33.6.3 FACTS: The septic site evaluation, including test pits and soil evaluation, has been completed. The proposal would comply with all CDHD requirements.
 - 33.6.4 HEARING EXAMINER FINDING: Based on application materials, the proposed development is consistent with Water Quality guidelines.
- 33.7 Fire Protection.
 - 33.7.1 On-site fire-fighting provisions are for the initial attack of the structure and the surrounding environment.
 - 33.7.2 Site preparation for fire protection normally requires the removal of all fine forest fuels for a thirty (30) foot radius around the primary structure. Specifically, fine forest fuels all weeds and combustible debris (except for small scattered ornamentals). Also, trees within one hundred (100) feet of the primary residence should be thinned so that the crowns do not touch each other and should be pruned of all dead limbs and debris within ten (10) feet of the ground.
 - 33.7.3 All single-family residences shall have a cistern, well, or pond with five hundred (500) gallon minimum storage capacity. Also, a powered pumping system shall be provided for each residence which can reasonably produce eighteen (18) gallons per minute for a thirty (30) minute duration.
 - 33.7.4 Enough fire hose should be available to reach a one hundred (100) foot radius around the primary structure. The pump should be able to deliver a minimum of fifty (50) pounds of pressure at the nozzle at the highest elevation of the one hundred (100) foot radius.

- 33.7.5 The pumping system should have at least a one-inch port, with a four-five (4-5) horsepower engine which will develop approximately one hundred (100) pounds of pressure. This is not to discourage the utilization of a gravity flow type of system.
 - 33.7.6 The water storage facility should be designed to be functional and operable during the normal Forest Service fire fighting season.
 - 33.7.7 The water pumping system should be located at least thirty (30) feet from the structure or in a position that access to the pump is protected in the event of structural fire.
 - 33.7.8 All structural chimneys shall be equipped with an approved spark arrestor and all tree branches within fifteen (15) feet of the chimney shall be removed.
 - 33.7.9 FACTS: Fine forest fuels within a 30 ft. radius around the residence would be cleared. The IDROD guidelines require vegetation removal and thinning whereas the Shoreline Master program regulations prohibit most vegetation removal. A balance would be achieved between two competing requirements to limb the few trees that are within 100 ft. of the residence. Some thinning would be employed to reduce the risk of fire travel through the crowns of the trees. On the river side of the structure, limbing would be employed to the greatest extent possible in lieu of taking trees out, to protect riparian habitat.
 - 33.7.10 The development is proposed to have a well that would be available for fire protection that would be augmented by a 500-gallon cistern that would be provided uphill from the structure for fire protection. Locating the cistern above the structures would allow the water fed by gravity. A Honda 5.5Hp WH20 high-pressure water pump would be provided to pump water from Icicle Creek. Enough fire hose would be available to reach a 100 ft. radius around the structure.
 - 33.7.11 The chimney would be an approved spark arrestor and all vegetation within 15 ft. would be removed.
 - 33.7.12 HEARING EXAMINER FINDING: The Hearing Examiner sets as a condition of approval requiring the applicant to meet Fire Protection guidelines.
34. Icicle Valley Access Road Design Guidelines - These guidelines do not apply because the subject property and two other parcels utilize the existing access easement. No changes are proposed to the existing driveway.
35. CCSMP Section 7.7.3, Shoreline Conditional Use Permit: Review Criteria
- 35.1 Conditional use criteria. An applicant proposing a conditional use shall affirmatively demonstrate compliance with review criteria below or as thereafter amended in WAC 173-27-160.
 - 35.1.1 How is the proposed use consistent with the policies of RCW 90.58.020 and the SMP?
 - 35.1.2 In adopting master programs, it is ensured by the Department of Ecology that the policies and procedures of the CCSMP are consistent with RCW 90.58.
 - 35.1.3 HEARING EXAMINER FINDING: The development is consistent with the adopted Chelan County Shoreline Master Program.
 - 35.2 How will the proposed use avoid interference with the normal public use of public shorelines?
 - 35.2.1 Finding of Fact: The proposed use would occur within the upland of a privately-owned parcel. It would have no effect on the normal public use of public shorelines on Icicle Creek. Public lands are present along Icicle Road to the east, south and west of the property. The proposed development would not affect these

neighboring public lands and would be entirely contained within the subject parcel.

35.2.2 HEARING EXAMINER FINDING: The proposed use/development would not interfere with public shorelines.

35.3 How will the proposed use of the site and design of the project be compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this SMP?

35.3.1 Finding of Fact: The subject property is a privately-owned parcel located within a large geography of publicly owned forest lands, with a minimal number of residential properties. The parcel is zoned Rural Residential/Resource 20 (RR20), as such the parcel may be developed with a single-family residence per Chelan County Code Chapter 11.04. The shoreline of the parcel has a designation of 'natural' shoreline designation per the CCSMP. The proposed development is fully located within the upland of the parcel and would not affect the shoreline environment of Icicle Creek.

35.3.2 HEARING EXAMINER FINDING: The proposed development would be compatible with those in the surrounding properties.

35.4 How will the proposed use cause no significant adverse effects to the shoreline environment in which it is to be located?

35.4.1 Finding of Fact: The proposed development is fully located within the upland of the parcel and would not affect the shoreline environment of Icicle Creek. The concrete foundation for the single-family residence has already been legally constructed at the subject property under previously issued permits. The foundation is located no less than 50 ft landward of the OHWM of Icicle Creek.

35.4.2 HEARING EXAMINER FINDING: The proposed development would cause no unreasonable adverse effects to the shoreline.

35.5 How will the public interest suffer no substantial detrimental effect?

35.5.1 Finding of Fact: The proposed development is the construction of a single-family residence on a privately-owned parcel within rural Chelan County.

35.5.2 HEARING EXAMINER FINDING: The proposed development is a private use, located on privately owned property.

36. Shoreline Variance Permit Regulation - Chelan County Shoreline Master Program (CCSMP)
Section 7.8 Shoreline Variance Permits

36.1 CCSMP Section 7.9.1 Purpose and Review Process. The purpose of a 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.

36.2 After a Shoreline Variance application has been approved by the County, the County shall submit the permit to Ecology for Ecology's approval, approval with conditions, or denial. Ecology shall review the file in accordance with WAC 173-27-200.

36.3 CCSMP Section 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.

- 36.3.1 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.
- 36.3.1.1 Finding of Fact: There is very little opportunity for additional development in the Icicle Creek Valley and within the vicinity of the subject parcel. A majority of the land in this part of the county is publicly owned forest land and cannot be developed with residential uses. The construction of a single-family residence within the upland of the subject parcel will not adversely impact the natural function of the shoreline environment along this section of the creek. This parcel and the two adjoining parcels that share the residential access road have been designated as residential in the zoning for Chelan County. The two neighboring parcels are already developed with single-family residences and the applicant stated construction on the proposed residence under previous permits which have since expired.
- 36.3.1.2 HEARING EXAMINER FINDING: The Hearing Examiner finds that the denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020.
- 36.3.2 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:
- 36.3.2.1 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?
- 36.3.2.2 Finding of Fact: The hardship results from the application of the assigned 150 ft 'natural' shoreline buffers for Icicle Creek as designated within Section 3.8 of the CCSMP. The strict application of this buffer precludes the completion of the residence on the subject parcel. The parcel is encumbered by the steep and ragged nature of the subject property and the fact that the foundation for the residence was already legally constructed no less than 50 ft landward of the OHWM of Icicle Creek based off of the shoreline buffer that was designated at the subject property at the time of the issuance of the original permits. When Chelan County adopted the most recent version of the CCSMP, the shoreline designation for the parcel was changed to 'natural', which increased the buffer of the creek and affected the ability of the residence to be developed at the subject property, requiring both a shoreline variance and a shoreline conditional use permit.
- 36.3.2.3 HEARING EXAMINER FINDING: The combination of the combined critical area buffers as set forth by the SMP preclude with reasonable use of the property.
- 36.3.3 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 restrictions or the applicant's own actions?
- 36.3.3.1 Finding of Fact: The hardship facing the applicant is specifically related to physical constraints on the parcel and the application of the Section 3.8 of the CCSMP. Constraints include the shape and location

- of the Icicle Creek shoreline in relation to the steep and rugged topography of the parcel. The most logical location for construction is where the existing concrete foundation is already located. To the south of the foundation, the topography of the parcel increases dramatically in slope and becomes essentially unusable for residential construction given the scope of earthwork that would be required to safely accommodate residential development. The applicant has no control over these elements and has not caused them by their own actions.
- 36.3.3.2 HEARING EXAMINER FINDING: The hardship appears to be specifically related to the property and is the result of unique conditions like irregular lot shape and natural features.
- 36.3.4 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?
- 36.3.4.1 Finding of Fact: The subject property is a privately-owned parcel located within a larger geography of publicly owned forest lands and minimal number of large private and recreational parcels. The parcel is zoned Rural Residential/Resource 20 (RR20). As such the parcel may be developed with a single-family residence per Chelan County Code Chapter 11.04 District Use Chart. The shoreline of the parcel has a designation of 'natural' per the CCSMP. Single-family residences are permitted within the 'natural' shoreline with the issuance of the Shoreline Conditional Use Permit (SCUP). Completion of the construction of the single-family residence at the subject property would result in no adverse impacts to critical areas or net-loss of ecological function.
- 36.3.4.2 HEARING EXAMINER FINDING: As conditioned, the development would not cause adverse impacts to the shoreline environment. The development would be compatible with the authorized uses in the zoning designation, comprehensive plan, and SMP.
- 36.4.4. How will the variance not constitute a grant of special privilege not enjoyed by other properties in the area?
- 36.4.4.1 Finding of Fact: The requested shoreline variance would not constitute a granting of special privilege. The shoreline buffer at this location is so large that it encompasses all of the logical buildable area on the parcel, including the existing location of the legally established concrete foundation. The application cannot complete the construction of the single-family residence without the granting of the requested variance.
- 36.4.4.2 HEARING EXAMINER FINDING: The requested variance would not constitute a grant of special privilege not enjoyed by other properties in the area intended for recreational and residential use, a process that was already formally stated under previously issued.
- 36.4.5. How is the variance requested the minimum necessary to afford relief?
- 36.4.5.1 Finding of Fact: The applicant is requesting a variance to the shoreline buffer in the portion of the parcel where the existing foundation is located and where the proposed single-family residence would be completed. The single-family residence would still be located no less

- than 50 ft. landward of the OHWM of Icicle Creek and on the landward side of the existing shared residential gravel access road.
- 36.4.5.2 HEARING EXAMINER FINDING: The shoreline variance request would not extend beyond the construction of the residence and is the minimum necessary in order to afford relief.
- 36.4.6. How will the public interest suffer no substantial detrimental effect?
- 36.4.6.1 Finding of Fact: The proposed development is the construction of a single-family residence on a privately-owned parcel within rural Chelan County. The public interest would not suffer substantial detrimental effect through the granting of the variance. All building and utilities would be constructed to meet all applicable building, fire and health district standards and mitigation would be provided to compensate for potential loss of ecological function.
- 36.4.6.2 HEARING EXAMINER FINDING: As conditioned, the proposed development would meet all applicable building, fire, and health district standards. The public interest would not suffer substantial detrimental effect as a result of the proposed development.
37. An open record public hearing after due legal notice was held via Zoom on July 20, 2022.
38. The entire Planning staff file was admitted into the record.
39. 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 and Applicant. Mr. Walker testified that he agreed with all the representations set forth within the staff report. Mr. Walker indicated that they had no objection to any of the proposed Conditions of Approval, with the exception of proposed Condition of Approval No. 16. Mr. Walker indicated that they had recently submitted an elevation certificate demonstrating that the building site is not within the flood plain, so no flood development permit would be needed.
40. No member of the public testified at this hearing.
41. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
42. 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 Hearing Examiner finds that the development, as conditioned, is consistent with the Comprehensive Plan.
4. As conditioned, the proposed development would not result in adverse impacts to the ecological function of Icicle Creek.
5. The proposed development meets the intent of the goals and policies of the Comprehensive Plan for residential uses.
6. As conditioned, the project meets Icicle Design Review Guidelines.
7. As conditioned, the project meets Shoreline Conditional Use Permit Review Criteria.

8. As conditioned, the project meets Shoreline Variance Permit Regulations.
9. As conditioned, the proposed development would meet all applicable building, fire, and health district standards. The public interest would not suffer substantial detrimental effect as a result of the proposed development.
10. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

This Shoreline Conditional Use Permit and Shoreline Variance 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).

Anyone aggrieved by this decision on the Conditional Use Permit has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.

Chelan County Code Section 1.61.130 provides that any aggrieved party or agency may make a written request for reconsideration by the Hearing Examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Community Development Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner. If the Hearing Examiner chooses to reconsider, the Hearing Examiner may take such further action deemed proper and may render revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under Section 1.61.160.

This Shoreline Conditional Use Permit and Shoreline 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 CONDITIONAL USE PERMIT, SHORELINE VARIANCE, AND SHORELINE CONDITIONAL USE 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 25th day of July, 2022.

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 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.

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:
