

SHORELINE MANAGEMENT PERMIT

ACTION SHEET

Application #: SV 2022-118

Administering Agency Chelan County Department of Community Development

Type of Permits: ☒ Shoreline Variance Permit

Action: ☒ Approved ☐ Denied

Date of Action: October 5, 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:

Lisa Williams
530 Broadway E Unit 129
Seattle, WA 98102

This is an application for a shoreline variance to vary the shoreline buffer setbacks of the subject property from 100 ft. to 47 ft. in order to construct a future residence. The applicant has submitted a Habitat Management and Mitigation Plan (HMMP) to ensure that the proposed variance of the shoreline buffer setbacks for the subject property would result in no-net-loss of ecological value or function. The subject property is located in the Rural Residential/Resource 20 (RR20) zoning district and holds a 'Rural' shoreline environment designation for Icicle Creek, a shoreline of statewide significance.

Upon the following property: 7047 Icicle Road, Leavenworth, WA 98826.

Within 200 feet of Icicle Creek and/or its associated wetlands.

The Shoreline Master Program is applicable to this development: Sections 3, 4, and 5.

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 CCC Section 11.95.040, the construction shall be in substantial conformance with the revised site plan of record, dated July 18, 2022.
2. Pursuant to CCC Section 11.95.040 and the International Building Code, Section 105, the applicant shall obtain a building permit for the construction of the single-family residence.
3. Pursuant to CCC Section 11.95.040, the submitted Habitat Mitigation and Management Plan (Exhibit B), and the revised site plans of record, date stamped July 18, 2022, the proposed plantings shall be completed 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 CCC Chapter 14.16 shall be required.
 - 3.1 Upon installation of the approved plantings, monitoring reports shall be submitted to Chelan County Community Development at years one (1), three (3), and five (5) to ensure survival rates.
4. Pursuant to CCC Section 11.88.190, no construction activity shall be permitted within 1,000 ft. of an occupied residence between the hours of 10 p.m. to 7 a.m.
5. Pursuant to RCW 27.53.020, 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.
 - 5.1 An inadvertent discovery plan must be submitted with the building permit application and kept onsite during all land disturbing activities.
6. 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.
7. 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.
8. 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.
9. 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.
10. For all easements, Chelan County assumes no liability whatsoever for the existence, status, location, nor nature of said easements.
11. Chelan County is not responsible for notification or enforcement of covenants or deed restrictions affecting use or title. Any permit issued does not acknowledge or recognize any covenants or deed restrictions or reservations that may burden or otherwise affect this property.

Applicant/owner assumes all risks and liability for any claims and liabilities for covenants or deed restrictions or reservations.

FINDINGS OF FACT

1. The applicants/owners are Lisa Williams, 530 Broadway E Unit 129, Seattle, WA 98102 and her agent is Ryan Walker, Grette Associates, LLC.
2. The project location is 7047 Icicle Road, Leavenworth, WA 98826.
3. The parcel number for the subject property is 24-17-27-311-000.
4. The legal description for the subject property is: T 24N R 17EWM S 27 PT NESW. The subject property is 0.36 acres in size.
5. The subject property is not located within an Urban Growth Area.
6. The Comprehensive Plan designation and zoning for the subject property is Rural Residential/Resource 20 (RR20).
7. The subject property has an existing domestic well and septic system. The proposed building location for the new single-family residence would be located in the exact footprint of previously approved building permit # BP-160435 that has since expired.
8. The property is comprised of a nearly level rocky terrace located at the toe of a mountainous talus-dominated hillslope. The site has been previously cleared in anticipation of the development of a single-family residence under building permit # BP-160435. Vegetation at this site is limited, with native trees and shrubs being located directly adjacent to the OHWM of Icicle Creek.
9. Property to the north: Icicle Creek / Rural Residential/Resource 20 (RR20).
10. Property to the south and west: Rural Residential/Resource 20 (RR20).
11. Property to the east: Private Road Easement / Rural Residential/Resource 20 (RR20).
12. The Aquifer Recharge form was completed with the variance application. Pursuant to Chelan County Code (CCC), Section 11.82.060(2)(A), residential dwelling units and their accessory uses are exempt from the aquifer recharge area regulations under this chapter.
13. According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject property does contain WDFW Priority Habitat Species. Therefore, the provisions of CCC 11.78 as it relates to priority habitat would apply.
14. The subject property does not contain any wetlands. Therefore, the provisions of CCC Chapter 11.80 would not apply.
15. The subject property is located within 200 ft. of the Icicle Creek, a shoreline of statewide significance. Therefore, the provisions of the Chelan County Shoreline Master Program (CCSMP) would apply.

16. According to the Federal Emergency Management Agency, FIRM Panel No. 5300150800A, flooding is indicated immediately adjacent to the subject property; therefore, the provisions of CCC 11.84 and 3.20 would apply.
17. The County GIS data map indicates known geologically hazardous conditions on the subject property. Therefore, the provisions of CCC 11.86 would apply. The applicant has submitted a Geologic Site Assessment prepared by Michael Heath of Heath Geotechnical Services, LLC, dated January 7, 2013. This report identifies several potential hazards, including rockfall from the cliff area, some minor avalanche risk, and minor risk of failure of the Icicle Ditch above the building area, but states that restricting a house location to the rather small northern site would probably satisfactorily mitigate the potential hazards discussed in the report. An updated geoassessment would be required to be submitted along with a residential building permit application.
18. Pursuant to comments received from the Department of Archaeology and Historic Preservation (DAHP) and the Yakama Nation Cultural Resources Program, the subject property is located in an area with high probability of containing cultural resources and a cultural resources survey will be required. In addition to a cultural survey, the applicants will be required to prepare an Inadvertent Discovery Plan (IDP) for the proposed project and prepare construction crews for the possibility of encountering archaeological material during ground disturbing activities. Pursuant to RCW 27.53.020, if the applicants 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 stop work and notify the appropriate tribal and state representatives and the Chelan County Department of Community Development of the finding for local, state and tribal coordination.
19. Pursuant to WAC 197-11-800(6)(e), variance applications that are based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surrounding and do not result in a change of land use or density are categorically exempt from the environmental review process.
20. Construction would begin upon issuance of all necessary permits and within the appropriate work window.
21. The subject property is within the Icicle Island Club and would be accessed from the internal private road that is off of Icicle Road.
22. Domestic water would be provided by an existing private shared well that is located on the subject property.
23. Power is provided by Chelan County PUD.
24. Sanitation would be provided by an on-site septic system that had already been installed as part of previously approved BP-160435. Based on the site plan of record, this existing septic system is located outside of the existing shoreline buffer.
25. The subject property is located within the boundaries of Fire District #3.
26. Noise from construction, typically associated with a residential construction. Construction noise is regulated by CCC, Section 11.88.190, which states no construction activity shall be permitted within one thousand feet of an occupied residence between the hours of ten pm to seven am.
27. Being as the proposed development is to be residential, the visual impact is anticipated to be minimal as the surrounding properties are developed residentially.

28. The application was submitted on March 10, 2022 with additional information submitted on July 18, 2022.
29. The Determination of Completion was issued on April 4, 2022.
30. The Notice of Application was issued on April 7, 2022.
31. The Notice of Public Hearing was issued on September 24, 2022.
32. 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 April 7, 2022 with comments due April 21, 2022. Agency comments are considered in the staff report and, when appropriate, associated recommended Conditions of Approval. The following is a list of Agencies who received notice and the date comments were received.

Agencies Notified	Response Date & Nature of Comment
WA Department of Ecology	May 5, 2022 – Applicants are required to demonstrate that they have followed mitigation sequencing and have avoided and minimize impacts to shorelines where practicable. There is not sufficient information provided at this time to demonstrate the design is compatible with authorized uses in the SMP and will not cause adverse impacts to shoreline environment. Applicant needs to demonstrate no-net-loss compensation for unavoidable buffer impacts through mitigation.
Chelan County Building Official	April 8, 2022 – No comments or concerns.
Confederated Tribes of the Colville Reservation	April 7, 2022 – The Colville Tribes recommend that the applicant prepare an Inadvertent Discovery Plan (IDP) for the proposed project and preparation of construction crews for the possibility of encountering archaeological material during ground disturbing activities.
Department of Archaeology & Historic Preservation	April 21, 2022 – Our statewide predictive model indicates that there is a high probability of encountering cultural resources within the proposed project area. However, due to the small footprint of the project, DAHP is not requesting a cultural resources survey at this time. We do ask that you prepare an Inadvertent Discovery Plan (IDP) and prepare construction crews for the possibility of encountering archaeological

Agencies Notified	Response Date & Nature of Comment
	material during ground disturbing activities.
WA State Dept. of Fish & Wildlife	No Comments Received
Yakama Nation	
US Army Corps of Engineers	
Chelan County Fire Marshal	
Chelan County PUD	
Cascade School District	
Fire District No. 3	
WA Dept. of Natural Resources	

33. A public comment was received from Charles and Cindy Martin on May 2, 2022, voicing opposition to the development with concerns about the septic system, the proximity of the development to the well and inconsistencies on the application.
34. The Comprehensive Plan has been reviewed, specifically, the goals and policies related to the Rural Residential/Resource 20 (RR20) Comprehensive Plan designation and Critical Areas, for consistency with the proposed residential development. The project is consistent with the Rural Residential/Resource 20 (RR20) 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. Uses appropriate for these areas include: residential; agriculture; and forestry. Additional uses may be considered with supplemental provisions. Additionally, the project 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.
35. Chelan County Code 11.08.020: Standards for the Rural Residential/Resource 20 (RR20) Zoning District:
 - 35.1 Minimum Lot Size: 20 acres.
 - 35.1.1 The applicant is not requesting to modify the lot size.
 - 35.1.2 This requirement does not apply.
 - 35.2 Minimum Lot Width: 200 ft. at the front building line.
 - 35.2.1 The lot is only 171 ft. at the front building line.
 - 35.2.2 The lot doesn't comply with the required building width, but it is a lot of legal record.
 - 35.3 Maximum Building Height: 35 ft.
 - 35.3.1 Building height would be calculated during building permit review.

- 35.3.2 Building height would be determined during review of the building permit application.
- 35.4 Maximum Lot Coverage: Buildings and structures shall not occupy more than 35 percent of the lot area.
 - 35.4.1 According to Chelan County Assessor's records, the property is 0.36 acres, which would allow for 5,489 sq. ft. of lot coverage. Based on the application materials dated July 18, 2022, and the Assessor's records, the total lot coverage upon completion of the project would be approximately 1,900 sq. ft.
 - 35.4.2 The project would meet the requirement for maximum lot coverage.
- 35.5 Minimum Setback Distances: Front yard 5 ft. from the private easement; Side yard 5 ft. from side property line; Rear yard 20 ft. from rear property line.
 - 35.5.1 As indicated on the site plan of record (Exhibit A), dated July 18, 2022, the proposed residential structure would meet the applicable zoning setbacks.
 - 35.5.2 The proposed residential structure would meet the minimum required setbacks.
- 35.6 Off-street parking requirements in this district shall be as follows: (A) Two spaces per single-family dwelling.
 - 35.6.1 Based on the revised site plan of record, two parking spots are proposed for the single-family residence.
 - 35.6.2 The proposal would satisfy the off-street parking requirement.
- 36. Chelan County Code 11.95.030: Variance Evaluation Criteria:
 - 36.1 No variance shall be granted unless it can be shown that all of the following conditions exist:
 - 36.1.1 The variance is necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same neighborhood or district and shall not constitute a grant of a special privilege.
 - 36.1.2 Hearing Examiner Finding: The variance would allow for the development of a single-family residence and appurtenances on a legally established residential lot. The proposed residential development would be similar to the existing residences and appurtenances on the surrounding properties.
 - 36.1.3 Conclusion: The proposed development is similar to the residential development on the surrounding properties. Therefore, this variance would not constitute a special privilege
 - 36.2 The plight of the applicant is due to unique circumstances such as topography, lot size or shape, or size of buildings, over which the applicant has no control.
 - 36.2.1 Hearing Examiner Finding: The plight of the applicant is due to the natural characteristics of the subject property over which the applicant has no control. The northern portion of the property abuts Icicle Creek and therefore has a 100-ft. shoreline buffer encumbering the property whereas the southern portion of the property consists of an unbuildable talus slope. In addition, there is already an existing septic system installed on the subject property that was built out as part of building permit # BP-160435 by the previous landowner.

- 36.2.2 Conclusion: The variance request is based on the 100 ft. shoreline buffer located on the parcel, the unbuildable rear portion of the property, and the previously completed septic system install by a previous landowner, all of which creates limited possible building sites for a residence of which the applicant has no control.
- 36.3 The hardship asserted by the applicant is not the result of the applicant's or the owner's action.
- 36.3.1 Hearing Examiner Finding: The hardship asserted by the applicant appears to be not by their own actions. The applicants are proposing a 47 ft. setback from the OHWM of Icicle Creek rather than the 100 ft. setback that is required by the Chelan County Shoreline Master Program (CCSMP).
- 36.3.2 Conclusion: The hardship does not appear to be of the owners' actions.
- 36.4 The authorization of the variance shall not be materially detrimental to the public welfare and safety, to the purposes of this title, be injurious to property in the same district or neighborhood in which the property is located, or be otherwise detrimental to the objectives of the comprehensive plan.
- 36.4.1 Hearing Examiner Finding: The proposed project would not create any additional public welfare or safety issues. The residential development would meet all building code requirements and would conform to other required sections of code to the greatest extent possible. The location of the proposed project would minimize impacts to the shoreline of Icicle Creek and its associated buffer through the implementation of the proposed Habitat Management and Mitigation Plan (HMMP). The project has been responsibly designed and provides important attributes which promote public welfare and safety.
- 36.4.2 Conclusion: The proposal satisfies the objectives of the comprehensive plan for the Rural Residential/Resource 20 (RR20) zone and shoreline areas. As conditioned, the proposal would not be materially detrimental to the public welfare and safety or injurious to property in the neighborhood. The applicant is requesting approval of the preservation of a property right that is the same as is enjoyed by other properties in the neighborhood. The authorization of this variance for the construction of the proposed project would promote the goals and objectives of Title 11 and the comprehensive plan.
- 36.5 The hardship asserted by the application results from the application of this title to the property.
- 36.5.1 Hearing Examiner Finding: The application of the 100 ft. shoreline buffer setback required by the CCSMP results in the inability to construct a residence due to the existing talus slope at the rear of the property. Additionally, the installation of the septic system for expired building permit BP-160435 by the previous land owner limits where a residence can be built on the subject property.
- 36.5.2 Conclusion: The hardship is a result of the lot topography and the application of the Chelan County Code as well as the CCSMP to the subject property based on property specific conditions.
- 36.6 The granting of a variance should not:
- 36.6.1 Be substantially based upon precedent established by illegal or nonconforming circumstances.

- 36.6.1.1 Hearing Examiner Finding: The variance request is based on the property's encumbrances due to the application of the CCSMP. The parcel was legally established pursuant to CCC Section 14.98.1090 definition of legal lot of record being as it was created prior to October 17, 2000.
- 36.6.1.2 The project, as proposed, would conform to Chelan County building codes and setback requirements associated with the Rural Residential/Resource 20 (RR20) zoning designation. The hardship stems from the shoreline and the associated buffers and the talus slope that exists on the southern portion of the subject property.
- 36.6.1.3 Conclusion: The proposed variance appears to be based on the application of the CCSMP as it relates to the associated shoreline buffers and the presence of the talus slope on the southern portion of the property.
- 36.6.2 Be substantially based upon lack of reasonable economic return or a claim that the existing/proposed structure is too small.
 - 36.6.2.1 Hearing Examiner Finding: The applicant indicates that the request is not based on economic return, but rather the application of Title 11 and the undue hardship posed on the applicant by the implementation of the required shoreline buffers. The buffers preclude the development of the property utilizing the guidelines for rural development as allowed within the Chelan County Code for parcels zoned Rural Residential/Resource 20 (RR20).
 - 36.6.2.2 Conclusion: There is no claim of economic return. The reduced buffer would provide a building area for a residential structure that is compatible in size to other residences in the development.
- 36.6.3 Be based on the fact that the condition, for which the variance is requested, existed at the time the applicant acquired the property.
 - 36.6.3.1 Hearing Examiner Finding: The lot was legally created prior to the County adoption of GMA requirements and the existing CCSMP. The current owner acquired the property on November 6, 2020, which was after BP-160435 had expired.
 - 36.6.3.2 Conclusion: The lot was legally created as a residential lot prior to the County's adoption of zoning codes and SMP regulations; however, these codes and regulations did exist at the time the applicant acquired the property.
- 36.6.4 Result in a de facto zone reclassification.
 - 36.6.4.1 Hearing Examiner Finding: The proposed variance does not change the permitted land uses.
 - 36.6.4.2 Conclusion: This does not apply.
- 36.6.5 Be substantially for the purpose of circumventing density regulations.
 - 36.6.5.1 Hearing Examiner Finding: The proposed variance does not affect density.
 - 36.6.5.2 Conclusion: This does not apply.

This site is located along Icicle Creek within the 'rural' shoreline designation. The proposed residential use/structure is permitted in this designation and is required to be located outside the required 100 ft. setback from Icicle Creek.

37. CCSMP Section 7.8 Review Criteria for Variance Permits - 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.
38. 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.
39. 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.
 - 39.1 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.
 - 39.1.1 Hearing Examiner Finding: RCW 90.50.020 prioritizes alterations of the natural shoreline condition in limited instances when authorized for the construction of single-family residences. The strict implementation of the CCSMP affects the ability of the applicant to develop a legal lot of record with a single-family residence as allowed within the zoning designation and consistent with Chelan County Code, the Chelan County Comprehensive Plan and RCW 90.50.020. The property cannot be legally developed without the granting of a variance due to the shoreline and the associated buffers.
 - 39.1.2 Conclusion: The Hearing Examiner finds that the denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020.
 - 39.2 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:
 - 39.2.1 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?
 - 39.2.2 Hearing Examiner Finding: The hardship results from the application of the assigned 100 ft Rural shoreline buffer for Icicle Creek as designated within Section 3.8 of the CCSMP. The strict application of this buffer precludes the construction of the residence on the subject parcel. The parcel is encumbered by the steep and rugged terrain and the fact that that site preparation for the residence was already started approximately 47 ft landward of the OHWM under the 2016 building permit. The building permit issued in 2016 has since expired.

Therefore, the applicant cannot complete construction of the residence without the granting of the requested Shoreline Variance. Per Chelan County Code, the parcel is zoned rural residential 20 (RR 20) and can be developed with a single-family residence. The proposed project is consistent with the designated zoning of the parcel and with the development of other parcels zoned rural residential 20 (RR20) in the immediate vicinity of the site.

39.2.3 Conclusion: The applicant is requesting to construct a single-family residence within the 'rural' shoreline jurisdiction.

39.3 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?

39.3.1 Hearing Examiner Finding: The hardship facing the applicant is specifically related to the small lot size, 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 applicant has no control over these elements and has not caused them by their own actions. The most logical location for construction of the single-family residence is where the previously permitted building site is located; approximately 47 ft landward of the OHWM of Icicle Creek. Preparation of this building site already began under the previously issued 2016 building permit. A domestic well and septic system have already been installed at the site. Earthwork has already been started and includes an unimproved parking area, an unimproved driveway, rock removal and stockpiling and some grading and excavation. To the south of the site, 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 proposed buildable area is located as far from the shoreline of the creek as possible given the location of the existing domestic well, septic system and drain field. This location also avoids geologic hazards to the south to the greatest extent possible. The preferred building site is also located in the vicinity of the existing access road and utilities. By locating the residence directly adjacent to this necessary infrastructure, impacts to critical areas are further minimized by avoiding unnecessary vegetation removal, excavation and grading.

39.3.2 Conclusion: The hardship appears to be specifically related to the property and is the result of unique conditions like irregular lot shape and natural features, such as Icicle Creek, which flows adjacent to the northern property boundary. The location Icicle Creek and its associated shoreline buffer and the talus slope are not the result of the owner's own actions.

39.4 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?

39.4.1 Hearing Examiner Finding: The site is a privately-owned parcel located in the Icicle Island Club Subdivision within a larger geography of publicly owned forest lands and a minimal number of large private residential and recreational parcels. The Icicle Island Club is a high-density development of approximately 40 residential lots less than ½ acre in size adjacent to Icicle Creek and on Islands

within the creek. Nearly all of the lots in the development are developed with residences. The construction of a residence on this lot would be similar to authorized uses in the area. The parcel is zoned rural residential 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 Rural per the CCSMP. Single-family residences are permitted within the Rural shoreline per CCSMP Table 3.6-a. Construction of the single-family residence at the site would result in no adverse impacts to critical areas; however, to meet Ecology's requirements, the applicant is proposing approximately 938 sq.ft. of planting to ensure no net-loss of ecological value or function as a result of construction of the residence..

39.4.2 Conclusion: 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 CCSMP.

39.5 How will the variance not constitute a grant of special privilege not enjoyed by the other properties in the area?

39.5.1 Hearing Examiner Finding: The applicant is requesting a shoreline variance in order to utilize the subject parcel for residential uses, in line with the designated zoning of the parcel as rural residential 20 (RR 20). The shoreline buffer at this location is so large that it encompasses all of the logical buildable area on the parcel, including the location of the previously permitted building site. Thus, the applicant cannot complete the construction of the proposed single-family residence without the granting of the requested variance. This is not a granting of special privilege, as nearly every other property in Icicle Island Club has been granted approval to construct a residence in a manner consistent with Chelan County Zoning Code and the Chelan County Comprehensive Plan. The applicant is not asking for a special privilege but is merely requesting a variance in order to utilize their property for its intended purpose as a legally established rural recreational and residential property; a process that was already formally started under the previously issued building permit.

39.5.2 Conclusion: The requested variance would not constitute a grant of special privilege not enjoyed by other properties in the area.

39.6 How is the variance requested the minimum necessary to afford relief?

39.6.1 Hearing Examiner Finding: The applicant is only requesting a variance to the shoreline buffer in the portion of the parcel where site preparation was already started under the previously issued building permit. This buffer request does not extend beyond the construction of the residence and is the minimum necessary in order to afford relief. The single-family residence would still be located no less than 47 ft landward of the OHWM of Icicle Creek. The residence would be located in a portion of the buffer which has already been designated for residential purposes and is in the immediate vicinity of existing utilities and an established access. By locating the residence where site preparation has already occurred and in the vicinity of established utilities, further impacts to the shoreline buffer are avoided. No significant woody vegetation removal would occur as a result of the proposed project. The existing native woody vegetation would remain intact and unaltered consistent with current conditions at the site. Construction of the single-family residence at the site would result in no adverse impacts to critical areas; however, to meet Ecology's requirements, the applicant

- is proposing approximately 938 sq.ft. of planting to ensure no net-loss of ecological value or function as a result of construction of the residence.
- 39.6.2 Conclusion: The requested variance would allow the applicant to have similar residential use as other properties within the development. The footprint of the proposed residence would be similar to the previously permitted residence in BP-160435.
- 39.7 How will the public interest suffer no substantial detrimental effect?
- 39.7.1 Hearing Examiner Finding: The proposed project is the construction of a single-family residence on a privately-owned parcel within rural Chelan County. As such, it would not cause substantial detrimental effect to the public interest. All public lands within the vicinity of the site, including the aquatic environment of Icicle Creek, would remain unchanged from existing conditions after the construction of the proposed project is completed
- 39.7.2 Conclusion: As conditioned, the proposed project 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 project.
- 37.8 Cumulative impacts. In the granting of all Shoreline Variance Permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. The County may require that the applicant submit a cumulative impact analysis prepared by a qualified professional for the subject of the variance:
- 37.8.1 Documenting other properties or uses on the same waterbody that are similarly situated and could request a similar variance.
- 39.8.1.1 This parcel and the other adjoining parcels in the Icicle Island development have been designated as residential in the zoning for Chelan County. Neighboring parcels are already developed with single-family residences and the applicant started preparation for the proposed residence under the previously issued building permit, which has since expired. Thus, Chelan County recognizes that this parcel is intended for residential and recreational uses.
- 39.8.1.2 There are very few properties on Icicle Creek that are similarly encumbered by as many critical areas and could request a similar variance as the subject property; therefore, this standard would be met.
- 37.9 Demonstrating consistency with the policies of RCW 90.58.020.
- 39.9.1 The requested variances would comply with the CCSMP and, therefore, the policies in RCW 90.58.020 which prioritizes alterations of the natural shoreline condition in limited instances when authorized for the construction of single-family residences.
- 39.9.2 The proposed variances demonstrate compliance with the policies of RCW 90.58.020; therefore, this standard would be met.
- 37.10 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.

39.10.1 The applicant has submitted a Habitat Management and Mitigation Plan demonstrating that the proposed development would result in a no-net-loss of ecological function. The applicant proposes to install mitigation for any buffer vegetation removed during the construction of the single-family residence and utilities. Similar variances would also be required to minimize impacts to critical areas and provide mitigation for any unavoidable impacts.

39.10.2 A Habitat Management and Mitigation Plan was submitted along with the application and through its implementation, along with the other conditions of approval, would result in no-net loss of ecological function in the shoreline environment.

40. The proposed variance to reduce the shoreline buffer on the subject property would not be anticipated to constitute the granting of a special privilege as other properties in close proximity are developed residentially. Due to the application of the Shoreline Master Program, the subject property is almost entirely encumbered by protective buffers. The proposed mitigation plantings are anticipated to alleviate potential impacts that could be associated with the proposed residential development and would result in a no-net loss of ecological function on the subject property.
41. An open record public hearing after due legal notice was held via Zoom video conferencing on October 5, 2022.
42. Appearing and testifying on behalf of the applicant was Eron Drew. Ms. Drew testified that she was the agent for the property owner and applicant and was authorized to appear and speak on their behalf. Ms. Drew indicated that the applicant had no objection to any of the proposed Conditions of Approval, and agreed with the representations contained in the staff report.
43. No member of the public testified at this hearing.
44. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
45. 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) zoning district. 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 SMP, 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. Subject to the Conditions of Approval, the project design is consistent with the Chelan County Shoreline Master Program requirements.
9. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

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

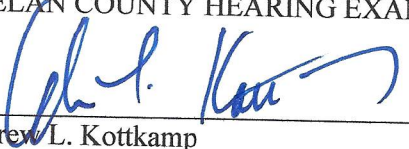
This Shoreline Variance Permit may be rescinded pursuant to RCW 90.58.140(7) in the event the permittee fails to comply with the terms and conditions hereof.

CONSTRUCTION PURSUANT TO THIS SHORELINE 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 10 day of October, 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.

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:
