

## SHORELINE MANAGEMENT PERMIT

### ACTION SHEET

**Application #:** SDP 22-423/SV 22-424  
**Administering Agency** Chelan County Department of Community Development

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

**Action:**  Approved  Denied

**Date of Action:** April 27, 2023

#### 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:

James & Donna Britt  
1316 Saddlerock Dr.  
Wenatchee, WA 98801

McMurry Family Revocable Trust  
625 Highland Rd.  
Ithaca, NY, 14850

This is an application for a Shoreline Substantial Development Permit and a Shoreline Variance for the replacement and expansion of an existing 368.5 sq. ft. joint-use dock with a new 674 sq. ft. joint-use dock. The proposed joint use-dock would be constructed in the same location along the shared property line; would be attached the existing abutment; and would consist of four sections: a new 4 ft. x 16 ft. gangway, a new 6 ft. x 47 ft. pier, an existing 4 ft. x 34.5 ft. gangway (reused from existing dock), and a new 8 ft. x 35 ft. float. The applicants are requesting a variance to the length and area dimensional standards for joint-use docks on Lake Chelan as outlined in Table 5.14-a of the Chelan County Shoreline Master Program (CCSMP). The dock extension would allow for the dock to extend far enough waterward to reach a depth 15 ft. when Lake Chelan is drawn down to its lowest, in order to keep the subject properties accessible during the drawn down times of year. The subject properties are only accessible by boat or floatplane

The project would be within a shoreline of statewide significance (RCW 90.58.030), Lake Chelan, in an "natural" shoreline designation.

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

**All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns, and successors.**

## 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. Pursuant to WAC 173-27-150 and RCW 90.58.130(2), prior to commencement of this development, the applicant must obtain any necessary aquatic permits from agencies with jurisdiction which may include, but is not limited to, the Washington State Department of Fish and Wildlife, the Army Corps of Engineers, the Washington State Department of Ecology, Chelan County PUD, Chelan County Building Department and the Washington Department of Natural Resources.
2. Pursuant to CCSMP Section 7.9, this shoreline permit shall be valid for the structures and activities described within the JARPA, narrative, and shown on the site plan of record dated October 17, 2022, except as modified by this decision or other jurisdictional agencies.
3. Pursuant to the Mitigation Planting Plan, date stamped October 17, 2022, the proposed plantings must 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 CCSMP Appendix B Section 6.5.6(2)(C), 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 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 application, 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. If any Native American grave sites or archaeological resources are discovered or excavated, work shall stop immediately.
  - 4.1. An inadvertent discovery plan must be submitted with the building permit application and kept onsite during all land disturbing activities.
5. 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.
6. 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.
7. Pursuant to CCSMP Section 5.14.B.7, the dock shall not be covered by a canopy or similar structure.

8. Pursuant to CCSMP Section 5.14.B.8, if safety railings are proposed, railings shall meet International Building Code requirements and shall be an open framework.
9. Pursuant to CCSMP Section 5.14.B.9, the proposed dock shall be marked with reflectors, or otherwise identified, to prevent unnecessarily hazardous conditions for the water surface users during the day or night.
10. Pursuant to CCSMP Section 7.10.B, substantial progress toward construction for which a permit has been granted must be accomplished within two (2) years for the granting of the permit.
11. Pursuant to CCSMP 7.10 and 7.11.A, authorization to conduct the approved development shall terminate five (5) years after the effective date of decision; the County may authorize a single extension for a period not to exceed one (1) year in accordance with CCSMP Section 7.10.D.

## II. FINDINGS OF FACT

1. The owners are James & Donna Britt, 1316 Saddlerock Dr, Wenatchee, WA 98801 and McMurry Family Revocable Trust, 625 Highland Rd, Ithaca, NY, 14850.
2. The agent for applicant is Anne Hessburg, Grette Associates, LLC, 151 S. Worthen St, Suite 101 Wenatchee, WA 98801.
3. The project locations are 48880 N. Water Way, Stehekin, WA 98852 and NNA, Stehekin, WA 98852.
4. The parcel numbers for the subject properties and legal descriptions are 32-18-06-420-030 and 32-18-06-420-040. (A) Lot 3 of Short Plat 2016, recorded October 08, 1990, under AFN: 9010080031. The subject property is 1.76 acres per the Assessor's records; and (B) Lot 4 of Short Plat 2016, recorded October 08, 1990, under AFN: 9010080031. The subject property is 5.2 acres per the Assessor's records.
5. The subject properties are not located within an urban growth area.
6. The property is located within the Rural Residential/Resource – 1 Dwelling Unit per 20 Acres (RR20) zoning district and comprehensive plan designation.
7. As stated in the JARPA, question 5(o), the subject property is currently used for residential/recreational purposes.
8. Parcel number 32-18-06-420-030 is currently used as residential/ recreational. Currently on site, there is an existing residence, storage building and joint-use dock.
9. The following applications/permits have been issued for the site:
  - 9.1 Building Permit 980854 – Single Family Residence; expired without all inspections completed.
  - 9.2 Shoreline Exemption SE 04-005 – Joint-Use Dock; approved by Hearing Examiner
  - 9.3 Building Permit 060125 – 310 sq. ft. Joint-Use Dock - expired without all inspections completed.
  - 9.4 Building Permit 130475 – Storage Building; expired without all inspections completed.



10. Parcel number 32-18-06-420-040 is currently used as residential/ recreational. Currently on site, there is an existing residence and joint-use dock.
11. The following applications/permits have been issued for the site:
  - 11.1 Building Permit 990472 – Single Family Residence; expired without all inspections completed.
  - 11.2 Shoreline Exemption SE 04-005 – Joint-Use Dock; approved by Hearing Examiner
  - 11.3 Building Permit 130475 – Storage Building; expired without all inspections completed.
  - 11.4 Building Permit 060125 – 310 sq. ft. Joint-Use Dock - expired without all inspections completed.
12. Site Information: As stated in the JARPA, question 5(l), the subject properties consist of moderately sloping upland leading down to a stabilized, minimally vegetated shoreline along the Lake. At this project site, there is an existing concrete abutment and joint-use dock. The upland portion of the subject properties are vegetated with native trees (pine and fir), and some native shrub steppe shrubs and grasses. Below the OHWM, shoreline habitat consists of moderately sloping, unvegetated rock and cobble. The surrounding properties are utilized for residential and recreational purposes.
  - 12.1 Northwest: Residential use; Rural Residential/Resource – 1 Dwelling Unit per 20 Acres (RR20).
  - 12.2 Southeast: Vacant; Rural Residential/Resource – 1 Dwelling Unit per 20 Acres (RR20).
  - 12.3 Northeast: Vacant; Rural Residential/Resource – 1 Dwelling Unit per 20 Acres (RR20) and Rural Public Lands and Facilities (RP)
  - 12.4 Southwest: Lake Chelan.
13. 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.
14. Pursuant to the Washington State Department of Fish and Wildlife Priority Habitat Species Maps, the subject properties contain protected Grizzly Bear and Northern Spotted Owl habitats; however, there are no identified critical habitats within the proposed development footprint; therefore, the provisions of CCSMP 6.5 Appendix B would apply.
15. The subject properties are located within 200 ft. of Lake Chelan, a shoreline of statewide significance. Therefore, the provisions of the CCSMP apply.
16. The proposed development is to occur waterward of the OHWM. Therefore, the provisions of CCSMP 6.5 Appendix B would not apply.
17. Based on the National Wetlands Inventory Maps prepared by the US Department of Fish and Wildlife Services, no wetlands are indicated on or adjacent to the subject properties. Therefore, the provisions of CCC Chapter 11.80 Wetland Areas Overlay District would not apply.
18. Construction would begin upon receipt of all permits and would end within one month from start date.
19. Traffic Circulation: The subject properties are not served by any roadways. The only access to the subject properties is from Lake Chelan.
20. Noise: The development must comply with CCC, Chapter 7.35 Noise Control.
21. Visual Impact: As conditioned, the visual impact is anticipated to be minimal.



22. The Application was submitted on October 17, 2022 and the Determination of Completeness was issued on November 16, 2022. The Notice of Application was issued on November 19, 2022 and the Notice of Public Hearing was issued on April 12, 2023.
23. 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 November 17, 2022 with comments due December 19, 2022. Agency comments are considered in the decision and when appropriate, associated Conditions of Approval are included. There were no public comments received. All comments from the below agencies were addressed within the review process and added to the 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
Chelan County Building Official	No Comment	
Chelan County Fire Marshal	No Comment	
WA State Department of Fish & Wildlife	No Comment	
Chelan County PUD	November 21, 2022	PUD requires the applicant to obtain Chelan County PUD Project License approval for this proposal.
WA Dept. of Ecology	December 15, 2022	Ecology would require the applicant to provide proof of the hardship as required by WAC 173-27-170.
WA Dept. of Archaeology and Historic Preservation	No Comment	
Yakama Nation	No Comment	
Confederated Tribes of Colville	November 17, 2022	Unable to determine if cultural resources are on-sight.
WA Dept. of Natural Resources	No Comment	
US Army Corps of Engineers	No Comment	

24. The applicant submitted an environmental checklist on October 17, 2022. Pursuant to WAC 197-11 process and RCW 43.21C of the State Environmental Policy Act (SEPA), an environmental review and a threshold determination was completed, and an Optional Determination of Non-significance (DNS) was issued on February 07, 2023. The SEPA Checklist and DNS are included within the file of record and adopted by reference.
25. The Comprehensive Plan has been reviewed specifically for the goals and policies related to the Rural Residential/Resource 20 (RR20) Comprehensive Plan designation for consistency with residential and recreational land uses.
26. The development is consistent with Goal CL 1 of the Resource Element, identify and protect critical areas from adverse environmental impacts while providing for reasonable use of the property.
27. The development is consistent with the Rural Residential/Resource 20 purpose statement: To allow for low intensity rural development, agricultural and forestry uses which do not require the

extension of services or infrastructure. These areas provide greater opportunities for protecting sensitive environmental areas and creating open space typical of a rural setting.

28. Uses appropriate for these areas include: open spaces; residential; agriculture; and forestry. Additional uses may be considered with supplemental provisions. These provisions shall address performance standards, impacts to the surrounding area, and be consistent with the goals and policies of the comprehensive plan. Such uses may include: natural resource support facilities and series; mineral resource activities; intensification of exiting small scale recreational or tourist uses that rely on a rural location or setting, but that do not include a new residential component; intensification of development on lots containing existing isolated nonresidential used; home occupations; bed and breakfasts; and community facilities.
29. The Hearing Examiner finds that the project, as conditioned, is consistent with the Rural Element of the Chelan County Comprehensive Plan.
30. Chelan County Shoreline Master Program (CCSMP) - CCSMP Critical Areas Appendix B:
  - 30.1 Wetlands: According to the National Wetlands Inventory Map prepared by the US Department of Fish and Wildlife Services, the subject property does not contain delineated wetlands; therefore, the provisions of CCSMP 6.1 Appendix B would not apply.
  - 30.2 Aquifer Recharge Area: Pursuant to CCSMP 6.2 Appendix B, the subject property does not meet the criteria pursuant to Chelan County Code Chapter 11.82, which would require a vulnerability report with development; therefore, the provisions of this section would not apply.
  - 30.3 Floodplain: According to the Federal Emergency Management Agency, FIRM panel # 5300150300A, there is no indication of floodplain or floodway on the subject property; therefore, the provisions of CCSMP 4.3 and CCSMP 6.3 Appendix B would not apply
  - 30.4 Geologically Hazardous Area: According to the Chelan County GIS mapping, the subject property is located within a geologically hazardous area; however, the proposed development is located waterward of the OHWM; therefore, the provisions of CCSMP 6.4 Appendix B would not apply.
  - 30.5 Fish and Habitat: According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject properties contain protected Grizzly Bear and Northern Spotted Owl habitats. CCSMP 6.5 Appendix B would not be applicable as there are no identified critical habitats within the proposed development footprint.
31. CCSMP Section 2: Goals and Objectives. The project is consistent with:
  - 31.1 Goal REC-1. Promote diverse, convenient, and adequate recreational opportunities along shorelines for local residents and visitors Other uses which are not classified or listed or set forth in this SMP may be authorized as conditional uses provided the applicant can demonstrate consistency with this SMP.
  - 31.2 Goal PRIVATE-1. Recognize and protect private property rights in shoreline uses and developments.
  - 31.3 Goal UE-1. Assure an appropriate pattern of sound development in suitable locations without diminishing the quality of the environment along shorelines.
32. CCSMP Section 3: Shoreline Jurisdiction & Environment Designations:
  - 32.1 The subject properties are located along and partially covered by Lake Chelan, which holds a 'Natural' shoreline environmental designation and is classified as a Shoreline of Statewide Significance, pursuant to WAC 173-20-100. The proposed development is permitted within shoreline jurisdiction with proper shoreline permitting.



33. CCSMP Section 4.1: Archaeological & Historic Resource Regulations:
- 33.1 Pursuant to CCSMP Section 4.1, Archaeological and Historic Resource Regulations, Developers and property owners must immediately stop work and notify the County, the Washington State Department of Archaeology and Historic Preservation, and affected Indian tribes if archaeological resources are uncovered during excavation.
  - 33.2 No comment was received indicating that the proposed development is located in an area of high probability of archaeological resources. Therefore, a cultural resource survey would not be required.
  - 33.3 The Applicants must submit an Inadvertent Discovery Plan prior to commencing any development authorized by this Shoreline Master Program (SMP). A copy of the plan must be kept on site during ground disturbing activities.
34. CCSMP Section 4.2: Ecological Protection & Critical Area Regulations - The provisions of this Section shall apply to any development within shoreline jurisdiction to document a finding of no-net-loss.
- 34.1 Mitigation sequencing:
    - 34.1.1 Based on the application materials submitted, mitigation sequencing has been applied to the proposed development. No adverse impacts will remain after applying the second and fifth priorities of mitigation sequencing.
    - 34.1.2 Minimizing impacts by limiting the degree or magnitude of the action and item implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts.
    - 34.1.3 Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.
    - 34.1.4 As conditioned, the proposed development is not anticipated to result in adverse impacts to the ecological function of Lake Chelan.
  - 34.2 Mitigation required for impact:
    - 34.2.1 Overall the entire proposed development would entail a total of 674 sq. ft. of overwater coverage, but would only result in an increase of 305.5 sq. ft. of overwater coverage. The entire dock would have a grated surface and the applicants have proposed additional mitigation plantings as required by the Army Corps for their Individual Permit process. Per USACE requirements, the proposed dock's entire overwater coverage would be mitigated for through the proposed grating over the entire structure as well as a proposed mitigation planning plan (Exhibit B).
    - 34.2.2 The two gangway sections are proposed to be 4 ft. in width. This is considered a mitigation measure in and of itself via minimization. The gangway sections would also include mitigation in the form of a grated surface. The new pier and float sections total 562 sq. ft. These sections would include mitigation in the form of a grated surface. Of the 562 sq. ft., 193.5 sq. ft. requires additional mitigation (562 sq. ft. - 368.5 sq. ft. of existing dock = 193.5 sq. ft.).
    - 34.2.3 The proposed mitigation planning plan includes two 98 sq. ft. planting areas (196 sq. ft.) with the two areas split evenly, one on each property. The planting plan would be accomplished by planting twenty-eight (28) shrubs including coyote willow (*Salix exigua*) or Wood's rose (*Rosa Woodsii*). All plantings would be adjacent to the OHWM of the lake, in areas where there is no native vegetation.
    - 34.2.4 As conditioned, the proposed development is not anticipated to result in a net loss to ecological function to Lake Chelan.
  - 34.3 Cumulative effects:

- 34.3.1 In the 10 miles of shoreline south of the subject properties, there are 18 privately owned parcels, 15 of which already have access from private docks. The significant existing buildout of private docks in this area minimizes the potential for similar variance requests. The majority of the shoreline is publicly owned by the U.S. Forest Service (USFS) or National Park Service. Any potential Federal projects on Federal land would not be regulated by the CCSMP. Any future private projects would be required to apply mitigation sequencing and assure no net-loss of ecological function. Based on the mitigation requirements of the CCSMP and low potential for similar projects, no negative cumulative effects are anticipated.
- 34.3.2 As conditioned, the proposed development is not anticipated to result in adverse cumulative effects to the ecological function of Lake Chelan.
- 34.4 CCSMP Section 4.5, Vegetation Conservation & Shoreline Buffer Regulations - Vegetation removal within shoreline jurisdiction that is not permitted without the appropriate review and approvals may be subject to enforcement provisions.
- 34.4.1 Based on the application materials, vegetation removal is not proposed with the development.
- 34.4.2 Removal of native vegetation is not proposed. Therefore, the provisions of this section would not apply.
- 34.5 CCSMP Section 5.2, General Aquatic Shoreline Modification & Use Regulations - These regulations apply to all development, modifications, and uses taking place waterward of the OHWM.
- 34.5.1 The proposed development would include new over and in-water structures and materials.
- 34.5.2 As conditioned, the proposed development would meet the required standards for aquatic shoreline modification and uses within Lake Chelan.
- 34.6 CCSMP Section 5.14, Private Moorage Facilities Regulations:
- 34.6.1 The proposed joint-use dock is to be located between lots that were created prior to May 3, 1994. However, property owners are proposing a joint-use dock rather than individual private use docks.
- 34.6.2 Based on the application materials, the proposed joint-use dock would meet the general design standards, with the exception of the allowable length and dimensional area. These exceptions would be reviewed under the variance criteria.
- 34.6.3 As conditioned, the proposed dock would meet the requirements for private moorage facilities on Lake Chelan with the exception of the allowable length and dimensional area; therefore, a shoreline variance is required.
- 34.7 CCSMP Section 7.5.2, Shoreline Substantial Development Permits: Review Criteria. In order for the permit to be approved, the decision maker must find that the proposal is affirmatively consistent with the following: (A) How is the proposal consistent with the policies and procedures of the Act (RCW 90.58)? (B) How is the proposal consistent with the provisions of Chapter 173-27 WAC, Shoreline Management Permit and Enforcement Procedures? (C) How is the proposal with this SMP?



- 34.7.1 The provisions of the Shoreline Management Act (SMA) and WAC have been met through the adoption of the CCSMP. The appropriate CCSMP requirements are addressed in this decision.
  - 34.7.2 According to JARPA, question 6(g), the fair market value of the development is \$100,000. The development is not exempt from the substantial development permit requirements.
  - 34.7.3 Hearing Examiner Finding: The project would be consistent with the provisions of the SMA, WAC and CCSMP.
- 34.8 CCSMP Section 7.8.1 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. 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.
- 34.9 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.
- 34.9.1 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.
    - 34.9.1.1 RCW 90.58.020 prioritizes alterations of the natural shoreline condition in limited instances when authorized for the construction of single-family residences and their appurtenant structures, including but not limited to, piers (docks). The strict implementation of the CCSMP affects the ability of the applicants to access their properties with a dock large enough to protect against the challenges associated with this portion of the shoreline resulting from low water levels during the draw down season and weather conditions which are common to this area, such as wind; 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 accessed without the granting of a variance due to the shoreline and the associated buffers.
    - 34.9.1.2 Hearing Examiner Finding: The denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020.
  - 34.9.2 Shoreline Variances Waterward of the OHWM. Shoreline Variance permits for development and/or uses that will be located waterward of the OHWM, as defined in RCW 90.58.030(2)(b), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided that applicant demonstrates affirmatively all of the following:
    - 34.9.2.1 How would the strict application of the bulk, dimensional or performance standards set for in this SMP preclude all reasonable use of the property?

- 34.9.2.2 The application of the dimensional standards in the CCSMP limits the length of a joint use dock on Lake Chelan to the minimum distance waterward from the OHWM to the point that 12 ft of water depth is reached and to 450 square feet of dock area. Because this property is only accessible by boat, the joint-use dock needs to be constructed in water depth that would allow the property owners to access their property all year round, even during maximum draw-down events on Lake Chelan. The fluctuating water level of the lake results in the need for a long, fixed pier and gangway so the floating dock can be out in deep water and the gangway can roll on the floating portion of the dock at all water levels while not being unreasonably steep and dangerous when the lake is drawn down. Further, the dock must be out far enough into the lake that it does not ground out due to the high wave action of Lake Chelan. If such a dock were to ground out during a storm, it would suffer significant damage, and would eliminate access to the property. Vessels moored at the dock during grounding events would likely be damaged which could cause them to sink or discharge petroleum products. In order to meet these construction requirements, the dock must have length long enough so that the shallowest end of the dock does not ground out. Because the lake typically fluctuates 15 feet and an allowance for wave action is needed to protect the floats, the dock must extend to a depth greater than 12 feet of water.
- 34.9.2.3 Due to the length needed to reach adequate water depth, the dock must also be larger in size than the 450 square foot dimensional standards of the CCSMP. The size is also necessary to construct a stable dock that will withstand the extreme wind and wave environment common to upper Lake Chelan. This area experiences some of the largest wind driven waves in the inland waters of the state. The purpose of the dock is to provide access to the properties from a boat and allow supplies to be offloaded. Due to the remote location of the properties, a dock is required to get onto the land from the lake. An adequately sized dock is needed to deliver supplies because there is no other option to deliver all the goods that are necessary for the use of the properties.
- 34.9.2.4 In the upper Lake Chelan, the docks that have been historically constructed are either wide cribs or large floating docks to allow them to move up and down with the waves. A trip around the lake to visit the docks shows that the common dock design is either wide cribs or floating docks.
- 34.9.2.5 Without approval of the variance, the property is not accessible at all times of the year. Access to the property is reasonable use.
- 34.9.2.6 Hearing Examiner Finding: Based on the application materials, the strict application of the standards of the CCSMP would cause issue with reasonable access and use of the subject properties.
- 34.9.3 How is the proposal consistent with the criteria established under subsections of this section?
- 34.9.3.1 How is the hardship described 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?
- 34.9.3.2 Due to the remote location of the subject property and the associated natural features, the wind present up-lake is very strong resulting in harsh climatic conditions. The proposed dock must be larger in size in order to survive the wave action common at this location of Lake Chelan. Because the drawdown of Lake Chelan during winter months is 15+ ft., the dock needs to be longer and larger in size so that it can reach the low levels of the lake in the winter and still be structurally sound from the wave actions that typically occur during this time of year.
- 34.9.3.3 The natural features of the environment described above cause the need for a large, strong joint-use dock to survive the climatic conditions and allow access to the property. The properties are located 43 miles from the Old Mill Park boat launch that is the closest usable launch when the water level is drawn down. The applicant has not caused any of these conditions.
- 34.9.3.4 Hearing Examiner Finding: Being as the associated hardship is related to the environmental conditions and remoteness, the hardship is not a result of the applicant's own actions.
- 34.9.4 How is the design of this project compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and the SMP, and will the project design not cause adverse impacts to the shoreline environment?
- 34.9.4.1 The Chelan County Comprehensive Plan and the CCSMP, allow for recreational use of properties located in the RR20 land use designation as well as along the shoreline. The proposed use would promote safer year-round recreational use of the subject properties and the applicants' property would likely stay intact during harsh weather events. The requested use—a residential dock—is an authorized use planned for in the Chelan County Comprehensive Plan and the CCSMP. The proposed size of the dock is comparable to other docks whose only access is by water.
- 34.9.4.2 Hearing Examiner Finding: Based on the application materials and the associated regulations, the proposed development is not anticipated to cause adverse impacts to the shoreline environment and would be compatible with the Chelan County Comprehensive Plan for the Rural Residential/Resource RR20 (RR20) land use designation uses and the CCSMP requirements since the 'natural' shoreline jurisdiction allows for structures to moor boats.
- 34.9.5 How will the variance not constitute a grant of special privilege not enjoyed by the other properties in the area?
- 34.9.5.1 Development of private properties along the shoreline of Lake Chelan is common. The surrounding properties are all developed with rural cabins and access docks. The majority of private and public docks in the area do not conform to the regulations and commonly require variances. As described elsewhere in this document, the specific location and climatic conditions cause this area to be unique and

incompatible with dock regulations intended for more conventional and common properties, particularly in the lower Lake Chelan basin area, where road access is a possibility. The nearest road accessed waterfront property is approximately 26 nautical miles down lake, on the south shore of the lake at 25-Mile Creek State Park. However, that park is closed in the winter and the launch is not deep enough for low water conditions even if it were open in the future. Chelan County and the Department of Ecology approved a similar variance on the adjacent property on July 27, 2020 (ref. SV 2020-003).

34.9.5.2 Hearing Examiner Finding: The proposed variance request would allow the property owners to safely access the property year-round. Being as the surrounding properties are developed with similar structures, the granting of this variance would not result in a special privilege to the applicants.

34.9.6 How is the variance requesting the minimum necessary to afford relief?

34.9.6.1 Based on the application materials, the proposed dock was designed to be the minimum area necessary in order to provide an adequate moorage accommodation as well as protection from extreme weather. The width of the fixed pile pier section has been minimized to 6 feet and the gangway sections have been minimized to 4 feet whereas the CCSMP would allow up to 8 ft wide for the fixed pier section. The length and area of the proposed dock is the minimum necessary in order for the dock to be in a water depth that allows for year-round use, and to have a gangway that does not become too steep and dangerous during the low lake level. The applicants are each allowed to have a single use dock but are voluntarily proposing to replace the dock with a joint use structure.

34.9.6.2 Hearing Examiner Finding: Based on application materials, the proposed variance appears to be the minimum necessary to provide reasonable relief for larger than allowed dock structure at a water depth that allows for year-round use, and to have a gangway that does not become too steep and dangerous during the low lake level.

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

34.9.7.1 Most of the surrounding parcels are large, publicly owned forest lands. The scope of the proposed development is to occur primarily on privately owned land and minimal in nature.

34.9.7.2 Hearing Examiner Finding: The proposed development would not be anticipated to cause detrimental effects to the public interest as the proposed development would occur on private property.

34.9.8 How will the public rights of navigation and use of the shorelines not be adversely affected?

34.9.8.1 Based on the county GIS mapping, the subject property is located on a portion of Lake Chelan which is over a mile wide. Additionally, per CCSMP Section 5.14.B.9, all moorage facilities are required to be marked with reflectors, or otherwise identified, to prevent hazard conditions for water surface users during the day or night.

34.9.8.2 The proposed development of an access dock is to be located on private property and for private recreational use.



- 34.9.8.3 Hearing Examiner Finding: As conditioned, the proposed development is not anticipated to cause an adverse effect for public use or navigation of the shoreline of Lake Chelan.
- 34.9.9 Cumulative Impacts. In the granting of all Shoreline Variances Permits, consideration shall be given to the cumulative impact of additional request for like actions in the area. The County may require that the applicant submit a cumulative impact analysis prepared by a qualified professional for subject of the variance:
- 34.9.9.1 Demonstrating no substantial adverse effects to the shoreline environment and achievement of no-net-loss of shoreline ecological function. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of the Act and shall not cause substantial adverse effects to the shoreline environment.
- 34.9.9.2 The Shoreline Master Program allows for residential and recreational development of private property.
- 34.9.9.3 Based on the JARPA 8(d), the development would entail a maximum of approximately 303.5 sq. ft. of new overwater coverage. Pursuant to USACE requirements, the dock would be mitigated through the proposed grating over the entire structure. The dock would also be mitigated for via a proposed native vegetation planting plan. The proposed native vegetation planting plan includes two 98 sq. ft. planting areas (196 sq. ft.) with the two areas split evenly, one on each property. The planting plan would be accomplished by planting twenty-eight (28) shrubs including coyote willow (*Salix exigua*) or Wood's rose (*Rosa Woodsii*). All plantings would be adjacent to the OHWM of the lake, in areas where there is no native vegetation.
- 34.9.9.4 Hearing Examiner Finding: The cumulative impacts of granting such variances are minimal and remain consistent with the policies of the Chelan County Shoreline Master Program.
35. 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 CCSMP, 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 development and would result in a no-net loss of ecological function on the subject property.
36. Based on the information contained in the application and submitted materials, the proposed development appears to be in compliance with the Revised Code of Washington, the Washington Administrative Code, the Chelan County Comprehensive Plan, the Chelan County Shoreline Master Program and the Chelan County Code
37. An open record public hearing after due legal notice was held via Zoom on April 26, 2023.
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 indicated that he had no objection to any of the proposed Conditions of Approval, and agreed with all representations in the staff report.

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.

### III. 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. The proposed development would cause no substantial adverse effects to the shoreline environment and no-net-loss of ecological function would result from the granting of this permit.
5. The proposed development meets the intent of the goals and policies of the Comprehensive Plan for residential uses.
6. The development complies with the CCSMP, therefore, it is consistent with WAC 173-27.
7. The finding of facts and conclusions within this decision demonstrate compliance with the CCSMP.
8. The development is consistent with the adopted Chelan County Shoreline Master Program.
9. The proposed development would cause no unreasonable adverse effects to the shoreline.
10. With the development being in conformance with the CCSMP, the Department of Ecology is ensured that the policies and procedures of the CCSMP are consistent with 90.58
11. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

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

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

**CONSTRUCTION PURSUANT TO THIS SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT AND SHORELINE VARIANCE 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 27 day of April, 2023.

CHELAN COUNTY HEARING EXAMINER

  
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Andrew L. Kottkamp

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

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.