

SHORELINE MANAGEMENT PERMIT

ACTION SHEET

Application #: SDP 23-220/SV 23-221
Administering Agency Chelan County Department of Community Development

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

 ■ Approved □ Denied

Action:

Date of Action: September 8, 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:

Lascor LLC / Lou Secord
18455 NE 199th St.
Woodinville, WA 98077

This is an application to construct a 320 sq.ft. joint-use pier addition, install a boatlift, and relocating an existing triple personal watercraft (PWC) lift on the subject parcels. The subject properties are located in the Rural Waterfront (RW) zoning district and hold an ‘Urban’ shoreline environment designation for Lake Chelan, a shoreline of statewide significance.

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.

- 1.1 Pursuant to comments received from the Chelan County PUD, the applicant shall obtain a valid Chelan County PUD license for the existing and proposed joint-use pier prior to construction. A copy of this license shall be provided at the time of building permit submittal.
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 plans of record dated May 19, 2023 (see Exhibit A), except as modified by this decision or other jurisdictional agencies.
3. Pursuant to CCC Section 11.95.040 and the International Building Code, Section 105, the applicant shall obtain a placement permit for the construction of the joint-use pier addition.
4. Pursuant to CCC Section 11.95.040, the submitted mitigation layout in the site plans of record (Exhibit A), date stamped May 19, 2023, 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.
 - 4.1 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.
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. A sample of this plan is attached as Exhibit B.
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 CCSMP Section 5.14.B.3, the applicant shall file a legally enforceable joint use agreement or other legal instrument that, at a minimum, addresses provisions for maintenance and operation, easements or tracts for joint-use access, and provisions for joint use for all benefiting parties.
9. Pursuant to CCSMP Section 5.14.B.7, the dock shall not be covered by a canopy or similar structure.
10. 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.

11. 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.
12. 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.
13. 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.
14. For all easements, Chelan County assumes no liability whatsoever for the existence, status, location, nor nature of said easements.
15. 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.

II. FINDINGS OF FACT

1. The owners are Lascor LLC / Lou Secord, 18455 NE 199th St., Woodinville, WA 98077.
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 2650 and 2685 S. Lakeshore Rd., Chelan, WA.
4. The parcel numbers for the subject properties and legal descriptions are 27-22-07-850-120 (2650 S. Lakeshore Rd.) and 27-22-07-850-110 (2685 S. Lakeshore Rd.) Lot 11 (2650 S. Lakeshore Rd.) and Lot 12 (2685 S. Lakeshore Rd.) of the South Cove plat; 0.53 acres and 0.54 acres respectively.
5. The subject properties are not located within an urban growth area.
6. The property is located within the Rural Waterfront (RW) Comprehensive Plan and Zoning designations.
7. 2650 S. Lakeshore Rd. is currently vacant. 2685 S. Lakeshore Rd. currently has an existing single-family residence (BP-910312) and the existing pier has an approved shoreline exemption (SE 22-498) to be replaced, but the subsequent building permit has not been submitted yet. The applicant would replace the existing pier and build the joint-use pier together if the shoreline variance is approved.
8. The uplake property consists of steeply sloping upland along South Lakeshore Road, leading down to concrete seawall at the OHWM of the lake. The upland property is fully developed residentially. Between the existing residence and the lake there is lawngrass and some landscaping shrubs. Landward of the patio and pole building near the seawall, the slope is naturally vegetated with shrub steppe grasses, a few shrubs and one tree. There is no native riparian vegetation on site between the seawall and the road. The down lake property consists of

steeply sloping upland along South Lakeshore Road. The site is developed with a seawall at the OHWM of the lake. On site vegetation is comprised of mostly native shrub steppe species, with lawn grass adjacent to the seawall. Below the OHWM, the lake is comprised of moderately sloping, unvegetated rock and cobble.

9. Site Information:
 - 9.1 North: Lake Chelan.
 - 9.2 South: S. Lakeshore Rd. / Rural Residential/Resource 10 (RR10).
 - 9.3 East: Single Family Residence / Rural Waterfront (RW).
 - 9.4 West: Vacant / Rural Waterfront (RW).
10. 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.
11. According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject properties do not contain WDFW Priority Habitat Species. Therefore, the provisions of CCSMP 6.5 Appendix B would not apply.
12. 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.
13. The subject properties are located on Lake Chelan, a shoreline of statewide significance. Therefore, the provisions of the Chelan County Shoreline Master Program (CCSMP) would apply.
14. According to the Federal Emergency Management Agency, FIRM Panel No. 5300150225A, 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.
15. The County GIS data map indicates known geologically hazardous conditions on the subject property. However, the proposed development is to occur waterward of the OHWM, so the provisions of CCSMP 6.5 Appendix B would not apply.
16. No comments from either the Department of Archaeology and Historic Preservation (DAHP) or the Colville Tribes were received. 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.
17. 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. However, since the application had a shoreline development permit component to it, pursuant to WAC 197-11-800, a SEPA DNS was issued on August 2, 2023. The SEPA Checklist and DNS are included within the file of record and are adopted by reference.
18. Both subject properties are part of the South Cove subdivision/plat that was recorded in May 1989. On the face of the plat, there is a restriction that states that *“Only joint use docks are permitted in the locations noted on the plat and in conformance with the provisions of Chelan County Shoreline Permit No. CUP 1566.”* The existing ½ of the joint-use pier on Lot 11 is 413 sq.ft. At the time of construction in 1991, there were no length, width, or area restrictions for

docks in the SMP. The existing pier is legally established, non-conforming to the current SMP standards due to the existing width and area. Based on the restriction on the face of the plat, a joint-use pier is required, but this was not a requirement of the SMP at the time, nor is it a requirement of the current SMP based on the lot creation date. The only way for Lot 12 (2650 S. Lakeshore Rd.) to obtain a pier is to construct the 2nd half of the joint-use pier. The applicant is requesting a variance from the current allowed joint-use dock size (450 sq.ft.) as a result of these previous land use decisions.

19. The proposed pier addition would be constructed on site and attached to the existing seawall the OHWM in a similar half "U" shape as the existing half on the adjacent up lake lot. The first pier section running perpendicular to the OHWM would be constructed adjacent to the shared side property line and would be a 4 ft wide x 10.8 ft long. The second section running parallel to the OHWM would be constructed on the down lake side of the first section, measuring 5 ft wide by 19 ft long. The third section would be perpendicular to the OHWM and would stretch waterward out into the lake, measuring 8 ft wide by 22.75 ft long. A total of twelve (12) 6-inch steel piles would be installed to support the pier. Each pile would be driven to 10 ft of depth or bearing. Once pile placement for the proposed pier addition is complete, pressure treated timber, aluminum or galvanized steel cross bracing would be placed between each pair of piles. Stringers would then be attached to the piles with metal brackets to create framework for the decking. Grated decking would be installed atop of the completed framework of the entire pier. The pier addition would encompass approximately 320 sq.ft. of overwater coverage. Together with the existing 1st half of this joint-use pier, the total square footage would be 733 sq.ft.
20. The proposed boatlift would be installed on the uplake side at the waterward end of the pier addition. The boatlift would have a maximum footprint of approximately 10 ft x 12.5 ft. and would be of an open nature and consisting of open steel framing. It would be installed by hand via a boat or barge at approximately 19.5 ft waterward of OHWM at a water depth of approximately 8.5 – 11.5 ft.
21. The existing 180 sq.ft. PWC lift on site consists of a grated surface platform attached to a 10 ft x 12.5 ft boatlift frame. The grated platform contains bunks to moor three PWCs. This existing PWC lift would be relocated by hand to the uplake side of the existing pier section on Lot 11 (2685 S. Lakeshore Rd.) via a boat or barge. The lift would be freestanding and would rest on the lakebed approximately 7.5 ft waterward of OHWM, at a water depth of approximately 5 – 8.5 ft.
22. Combined, the project would entail an increase of approximately 445 sq.ft. of new overwater coverage. Since the first boatlift on either lot does not require mitigation, only 321.5 sq.ft. of mitigation is required by USACE. As shown in Exhibit A, Mitigation would be accomplished by planting seven (46) shrubs, for a total of 322 sq.ft. that will be split between the two lots, with a 182 sq.ft. planting area on Lot 11, and a 140 sq.ft. planting area on Lot 12 in areas where there is no native vegetation. Through mitigation and grated decking, the entire project would result in a no-net-loss of ecological value and function.
23. Construction will begin upon issuance of all necessary permits and within the appropriate work window.
24. Traffic Circulation: The subject properties would continue to be accessed from the S. Lakeshore Rd.
25. Power: Power is provided by Chelan County PUD.
26. Fire Protection: The subject property is located within the boundaries of Fire District #3.
27. Noise: 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.

28. Visual Impact: Being as the proposed development is to be residential, the visual impact is anticipated to be minimal as the surrounding properties are developed residentially as well.
29. The Application was submitted on May 19, 2023 and the Determination of Completeness was issued on June 16, 2023. The Notice of Application was issued on June 27, 2023 and the Notice of Public Hearing was issued on August 26, 2023.
30. 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 June 27, 2023 with comments due July 27, 2023. 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
WA Department of Ecology	<p>July 26, 2023 –</p> <p>A new joint-use dock is proposed, and the applicant shall provide the administrator with a legally enforceable joint-use agreement, with provisions for maintenance and operation, benefiting current and future landowners. Chelan County Shoreline Master Program section 5.14 (B) 3. <i>If a joint-use dock is provided, the applicant shall file a legally enforceable joint-use agreement or other legal instrument that, at a minimum, addresses the following: i. Provisions for maintenance and operation; ii. Easements or tracts for joint-use access; and iii. Provisions for joint use for all benefiting parties.</i></p>
Chelan County PUD	<p>June 26, 2023 –</p> <p>Any proposed land uses, improvements and/or alterations, including changes in soil or vegetation at or below the 1100-foot Easement Elevation Line, requires the PUD's prior written approval in the form of a PUD license signed by the PUD. Provided all PUD conditions are met, the proposed construction has been approved by all governing agencies and provided no substantial changes have been made to the project since this review, a PUD license will be issued upon request of the property owner.</p> <p>Please withhold final construction approval until Chelan County Department of Community Development is provided with a valid PUD license for this project.</p>

Agencies Notified	Response Date & Nature of Comment
Confederated Tribes of the Colville Reservation	No Comments Received
Department of Archaeology & Historic Preservation	
WA State Dept. of Fish & Wildlife	
Yakama Nation	
US Army Corps of Engineers	
Chelan County Fire Marshal	
Chelan County Building Official	
WA Dept. of Natural Resources	

31. The Comprehensive Plan has been reviewed; specifically, the goals and policies related to the Rural Waterfront (RW) Comprehensive Plan designation and Critical Areas, for consistency with the proposed residential development.
32. The project is consistent with the Rural Waterfront (RW) purpose statement: This designation will provide the opportunity for the development, redevelopment and infill of existing intensely developed shoreline areas for residential, and water related/water dependent recreational and tourist development consistent with the rural character and rural development provisions outlined in the goals and policies of this comprehensive plan. These areas provide a distinct water related lifestyle.
33. Uses appropriate for these areas include: open space and developed open space; residential; agriculture; and forestry. Additional uses may be considered with supplemental provisions.
34. 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. The Hearing Examiner finds that the project, as conditioned, is consistent with the Chelan County Comprehensive Plan.
36. Chelan County Shoreline Master Program (CCSMP). CCSMP Chapter 2: Goals and Objectives. The project is consistent with:
 - 36.1 Goal REC-1. Promote diverse, convenient, and adequate recreational opportunities along shorelines for local residents and visitors.
 - 36.2 Goal PRIVATE-1. Recognize and protect private property rights in shoreline uses and developments.
 - 36.3 Goal UE-1. Assure an appropriate pattern of sound development in suitable locations without diminishing the quality of the environment along shorelines.
37. CCSMP Chapter 3: Shoreline Jurisdiction & Environment Designations. The subject properties are located along and partially covered by Lake Chelan, which holds a 'Urban' 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.

38. CCSMP Chapter 4: General Regulations. CCSMP Section 4.1: Archaeological & Historic Resource Regulations. 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.
- 38.1 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.
- 38.2 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.
39. Chelan County Shoreline Master Program (CCSMP) - 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. Based on the application materials, the provisions of Appendix B, Critical Areas Regulations have been reviewed based on the proposed development:
- 39.1 Applicability:
- 39.1.1 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 CCCSMP 6.1 Appendix B would not apply.
- 39.1.2 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.
- 39.1.3 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.
- 39.1.4 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.
- 39.1.5 Fish and Habitat: According to the Washington State Department of Fish and Wildlife, Priority Habitat and Species Maps, the subject properties do not contain WDFW Priority Habitat Species. Therefore, the provisions of CCSMP 6.5 Appendix B would not apply.
- 39.1.6 As conditioned, the proposed development is not anticipated to result in adverse impacts to any identified critical areas on the subject properties.
- 39.2 Mitigation sequencing:
- 39.2.1 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.
- 39.2.2 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.
- 39.2.3 Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

- 39.2.4 As conditioned, the proposed development is not anticipated to result in adverse impacts to the ecological function of Lake Chelan.
- 39.3 Mitigation required for impact:
- 39.3.1 Overall the entire proposed development would entail a total of 445 sq.ft. of new overwater coverage (320 sq.ft. joint-use pier addition + 125 sq.ft. boatlift = 445 sq.ft.).
- 39.3.2 Per USACE and Chelan County requirements, minimization measures are proposed for the joint-use pier addition. The proposed pier would have a section constructed at a 4 ft width, and a section constructed at a 5 ft width, as well as grating installed atop the entire structure. This grating more than mitigates for any assumed adverse impacts to the shoreline ecological function, and would equate to the required County mitigation ratio of 1:1 for the proposed new overwater coverage. Per USACE requirements, the total joint-use pier's overwater coverage that exceeds 450 sq.ft. will be mitigated for through additional compensatory mitigation at a 1:0.5 ratio via a proposed native vegetation planting plan. An additional 141.5 sq.ft. of mitigation is proposed for the proposed pier addition.
- 39.3.3 The proposed boatlift and existing PWC lifts do not create new adverse impacts to the shoreline ecological function due to their size and open design. The CCSMP does not require mitigation for any watercraft lifts. Per USACE requirements, the proposed boatlift is considered first lift one site, and the relocated PWC lift is the second lift on the uplake lot. The first boatlift on either lot does not require mitigation. In addition to the existing grated surface on the PWC platform, this second lift will be mitigated for via compensatory mitigation with the installation of a 180 sq.ft. native vegetation planting plan.
- 39.3.4 In total, 321.5 sq.ft. of mitigation is required by USACE. The native vegetation planting plan would be accomplished by planting seven (46) shrubs, for a total of 322 sq.ft. This mitigation will be split between the two lots, with a 182 sq.ft. planting area on Lot 11, and a 140 sq.ft. planting area on Lot 12. The shrubs would be either coyote willow (*Salix exigua*) or Woods' rose (*Rosa woodsii*). The planting areas would be as close to the OHWM of the lake as possible, within 10 ft. of the existing seawall, in an area where there is no native vegetation. This mitigation more than mitigates for any assumed adverse impacts to the shoreline ecological function.
- 39.3.5 As conditioned, the proposed development is not anticipated to result in a net loss to ecological function to Lake Chelan.
- 39.4 CCSMP Section 4.4: Public Access Regulations. The subject property is not located within a "gap area" identified in Table 11 of the Public Access Plan. Developments that are within a non-gap area are not required to provide public access. Single-family residential uses and structures are exempt from the public access regulations.
- 39.5 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.
- 39.5.1 Based on the application materials, vegetation removal is not proposed with the development.
- 39.5.2 Removal of native vegetation is not proposed. Therefore, the provisions of this section would not apply.

- 39.6 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.
- 39.6.1 The proposed development would include new over and in-water structures and materials. Based on the restriction on the face of the plat, a joint-use pier is required, but this was not a requirement of the SMP at the time, nor is it a requirement of the current SMP based on the lot creation date. The only way for Lot 12 to obtain a pier is to construct the 2nd half of the joint-use pier. The area of the proposed pier addition is necessary in order for the pier to be useful. The area of the proposed pier addition will meet the single-use dock area specification in Table 5.14-a. However, the total area of the joint-use pier will exceed the joint-use dock area specification, and therefore is allowed pending an approved Shoreline Variance (SV).
- 39.6.2 As conditioned, the proposed development would meet the required standards for aquatic shoreline modification and uses within Lake Chelan.
- 39.7 CCSMP Section 5.14, Private Moorage Facilities Regulations:
- 39.7.1 The proposed development would include new over and in-water structures and materials. Based on the restriction on the face of the plat, a joint-use pier is required, but this was not a requirement of the SMP at the time, nor is it a requirement of the current SMP based on the lot creation date. The only way for Lot 12 to obtain a pier is to construct the 2nd half of the joint-use pier. The area of the proposed pier addition is necessary in order for the pier to be useful. The area of the proposed pier addition will meet the single-use dock area specification in Table 5.14-a. However, the total area of the joint-use pier will exceed the joint-use dock area specification, and therefore is allowed pending an approved Shoreline Variance (SV).
- 39.7.2 Based on the application materials, the proposed pier addition would be sited to avoid adversely impacting shoreline ecological functions or processes, and would meet the required spacing and setback requirements. To the greatest extent possible, the pier addition has been designed to meet the general design standards, as well as the dimensional and material standards found in Table 5.14-a, specific to Lake Chelan. Deviations from design standards are addressed in the variance criteria as necessary to allow safe boat access to the property.
- 39.7.3 As conditioned, the proposed joint-use pier addition would meet the requirements for private moorage facilities on Lake Chelan with the exception of the allowable dimensional area; therefore, a shoreline variance is required.
- 39.8 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?
- 39.8.1 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.

- 39.8.2 According to JARPA, question 6(g), the fair market value of the development is \$50,000. The development is not exempt from the substantial development permit requirements.
- 39.8.3 Hearing Examiner Finding: The project would be consistent with the provisions of the SMA, WAC and CCSMP.
- 39.9 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.
- 39.10 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.
- 39.10.1 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.
- 39.10.1.1 The policy of the Shoreline Management Act is to provide for the management of shorelines by planning for and fostering all reasonable and appropriate uses. Single-family residences and their appurtenant structures are given priority in the implementation of this policy. Denial of the variance would prevent water access to Lot 12. Preventing water access prohibits use of the property for recreational purposes thereby thwarting a priority use.
- 39.10.1.2 Hearing Examiner Finding: The denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020.
- 39.10.2 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:
- 39.10.2.1 This proposal does not require a variance landward of the OHWM.
- 39.10.3 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 the applicant demonstrates affirmatively all of the following:
- 39.10.3.1 How would the strict application of the bulk, dimensional or performance standards set forth in this SMP preclude all reasonable use of the property?

- 39.10.3.2 This variance is being requested to vary the requirements of CCSMP that restricts the development of joint-use piers to specific dimensional standards. The application of the dimensional standards in the CCSMP limits the total area of the joint-use pier to a maximum of 450 square feet.
- 39.10.3.3 The South Cove subdivision/plat was recorded in May 1989. On the face of the plat, there is a restriction that states that, *"Only joint use docks are permitted in the locations noted on the plat and in conformance with the provisions of Chelan County Shoreline Permit No. CUP 1566."*
- 39.10.3.4 This plat was recorded under the authority of the original Chelan County Shoreline Master Program (SMP), adopted in 1975. At the time of the plat recording, joint use docks were not a requirement of this SMP. This plat restriction went beyond the requirements of the SMP at the time.
- 39.10.3.5 A residence and the first ½ of a joint-use pier were permitted and constructed on Lot 11 (up lake lot) in 1991; over 30 years ago. Dock permitting and construction took place before the 1994 SMP amendment that added the requirement that stated, *"For all subdivisions, shore subdivisions and all other divisions of land occurring after May 3, 1994, the date of adoption of this amendment, community docks or piers shall be encouraged and may be allowed where they are found to be consistent with the provisions of this program. No single use piers or docks may be authorized for any subdivision, short subdivision or other division of land nor for any lot within such subdivision, short subdivision or other division of land except in accordance with the provisions of Section 21.A.8."*
- 39.10.3.6 The existing ½ of the joint-use pier on Lot 11 is 413 sq.ft. At the time of construction in 1991, there were no length, width, or area restrictions for docks in the SMP. The existing pier is legally established, non-conforming to the current SMP standards due to the existing width and area.
- 39.10.3.7 Based on the restriction on the face of the plat, a joint-use pier is required, but this was not a requirement of the SMP at the time, nor is it a requirement of the current SMP based on the lot creation date. The only way for Lot 12 (down lake lot) to obtain a pier is to construct the 2nd half of the joint-use pier.
- 39.10.3.8 In the past 33 years since the South Cove subdivision was recorded, five joint-use piers have been developed (all of which are non-conforming due to either width, area or both), two halves of joint-use piers have been developed (without the other half developed on the adjacent lot), and three single-use piers have been developed on lots outside the joint-use dock easements recorded on the plat. The restriction on the face of the plat regarding joint-use piers has not been adhered to.
- 39.10.3.9 There is no existing moorage on site. The proposed development would provide a pier, moorage, and water access to their property via Lake Chelan. The area of the proposed pier addition is necessary in order for the pier to be useful. Without the approval of this variance,

- the 2nd half of the joint-use pier could have an area of only 37 sq.ft. This area would not be feasibly usable for moorage.
- 39.10.3.10 The area of the proposed pier addition will meet the single-use dock area specification in Table 5.14-a. However, the total area of the joint-use pier will exceed the joint-use dock area specification. A variance is necessary to allow for the addition to the pier to provide usable space on the applicant's side.
- 39.10.3.11 Hearing Examiner Finding: Based on the application materials, staff finds that the strict application of the standards of the CCSMP would cause issue with reasonable use of the subject properties by not allowing construction of a pier addition to an existing joint-use pier.
- 39.10.4 How is the proposal consistent with the criteria established under subsections of this section?
- 39.10.4.1 B.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?
- 39.10.4.2 Without the approval of this variance, the 2nd half of the joint-use pier could have an area of only 37 sq.ft. This area would not be feasibly usable for moorage. The strict application of the CCSMP would preclude reasonable permitted use of the subject property by preventing them from having reasonably sized pier on site, would therefore significantly interfere with reasonable use of the property.
- 39.10.4.3 Hearing Examiner Finding: The hardship appears to be unique to the subject properties and is the result of the combined application of plat requirements in place prior to the adoption of the current CCSMP. The hardship is not the result of the owner's own actions.
- 39.10.4.4 B.2. 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?
- 39.10.4.5 This hardship is specifically related to the application of the CCSMP, namely the dock dimensional standards that restrict joint-use docks to 450 sq.ft. There are no deed restrictions nor is it the applicant's own actions that restrict the size of the dock allowed. The construction of the first half of the joint-use pier on Lot 11, prior to the 1994-dimensional standards adoption, restricts the applicant from constructing a pier addition to complete the joint-use pier, without a variance. Only half of the "U" shaped joint-use pier was built in 1991, with an area of 413 sq.ft., even though the entire pier would have been allowed at the time without the need for a variance.
- 39.10.4.6 The applicant has not caused any of these unique conditions.
- 39.10.4.7 Hearing Examiner Finding: The hardship appears to be specifically related to the property and is the result of unique conditions of the combined application of plat requirements in place prior to the adoption of the current CCSMP. The hardship is not the result of the owner's own actions.
- 39.10.4.8 B.3. 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?
- 39.10.4.9 The project is compatible with the comprehensive plan and CCSMP which both allow structures to land and moor boats. Those regulations also allow and encourage residential uses in the shoreline environment and zoning designation.
- 39.10.4.10 The requested use—a residential joint-use pier—is an authorized use planned for in the comprehensive plan and CCSMP. The proposed size of the pier is comparable to other piers, particularly those within this subdivision, including those more recently constructed with the approval of a shoreline variance under similar circumstances.
- 39.10.4.11 This project would be compatible with other permitted activities in the area, which include docks, residences and recreational use of surrounding properties. The approval of the project would have no adverse effects on adjacent properties since all development would be located entirely on the applicant's property.
- 39.10.4.12 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 Waterfront (RW) land use designation uses and the CCSMP requirements.
- 39.10.4.13 B.4. How will the variance not grant constitute of special privilege not enjoyed by other properties in the area?
- 39.10.4.14 The majority of private piers within this 1989 subdivision do not conform to the current CCSMP regulations and commonly require variances. As described elsewhere in this document, the specific hardship is specific to Chelan County's adoption of dock dimensional standards in 1994, and the application of the current CCSMP, namely the dock dimensional standards that restrict joint-use docks to 450 sq.ft. Based on the restriction on the face of the plat, a joint-use pier is required, but this was not a requirement of the SMP at the time, nor is it a requirement of the current SMP based on the lot creation date.
- 39.10.4.15 It is not the applicant's own actions that restrict the size of the dock allowed, nor are they requesting the granting of a special privilege not enjoyed by others in the area or within this subdivision.
- 39.10.4.16 The construction of the first half of the joint-use pier on the adjacent up lake property, prior to the 1994-dimensional standards adoption, restricts the applicant from constructing a pier addition to complete the joint-use pier, without a variance.
- 39.10.4.17 Hearing Examiner Finding: The proposed variance request would allow the property owners to utilize their properties to the full extent as allowed in the South Cove subdivision. 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.
- 39.10.4.18 B.5. How is the variance requested the minimum necessary to afford relief?
- 39.10.4.19 The size of the dock has been minimized to be the least impacting as possible while still providing adequate moorage and safe use. The pier is the minimum necessary to afford relief, and has been designed

to meet current single-use dock dimensional standards. Were a joint-use dock not required via a plat restriction, the proposed dock design would be allowed on site without the need for a variance.

- 39.10.4.20 The width of the first two section of the pier addition have been minimized to 4 ft and 5 ft, whereas the CCSMP would allow up to 8 ft wide for the entire pier addition.
- 39.10.4.21 Hearing Examiner Finding: Based on application materials, the proposed variance appears to be the minimum necessary to provide reasonable relief for larger than allowed joint-use piers but still meet the intent of the plat requirements of the South Cove subdivision.
- 39.10.4.22 B.6. How will the public interest suffer no substantial detrimental effect?
- 39.10.4.23 Much of lower Lake Chelan is privately owned and subdivided for rural and recreational development. The proposed development would be consistent with the shoreline uses established on the adjacent properties. The proposed pier addition would not have a detrimental effect on the public interest or use of the shoreline. It would be constructed on private property.
- 39.10.4.24 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.
- 39.10.5 How will the public rights of navigation and use of the shorelines not be adversely affected?
- 39.10.5.1 The lake is approximately 1.5 miles wide in this location with ample opportunity for public navigation up and down the lake. Public rights to navigation will not be affected. This project will occur on private property and thus will have no effect on public use of shorelines. The pier would be constructed to be a shorter length than the 1st half of the joint-use pier on the adjacent uplake property. Many properties uplake and downlake already have piers, many of which are longer than the pier addition being proposed. This project would not result in impacts to navigation.
- 39.10.5.2 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.
- 39.10.6 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:
- 39.10.6.1 Documenting other properties or uses on the same waterbody that are similarly situated and could request a similar variance.
- 39.10.6.2 It is expected that if similar considerations were granted to all landowners within this subdivision with similar circumstances, that the cumulative effect would still be consistent with the Shoreline Management Act due to the minor nature of development, and the fact that this may be the only occurrence of these specific circumstances on

- the lake. This is one of the last lots within this subdivision to propose pier development.
- 39.10.6.3 Any future private projects would be required to apply mitigation sequencing and assure no loss of ecological function. Based on the mitigation requirements of the CCSMP and low potential for similar projects, no negative cumulative effects are anticipated.
- 39.10.6.4 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.
- 39.10.7 Demonstrating consistency with the policies of RCW 90.58.020.
- 39.10.7.1 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 which provides that the Shoreline Management Act is intended to establish a cooperative program between local government and the state. According to this provision, local government shall have the primary responsibility for initiating the planning required by the act and administering the regulatory program of shoreline management consistent with the policy and provisions of the act.
- 39.10.7.2 Hearing Examiner Finding: The proposed variance demonstrates compliance with the policies of RCW 90.58.020; therefore, this standard would be met.
- 39.10.8 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. The County shall determine whether the additional potential for variances will produce substantial adverse effects to the shoreline environment considering the characteristics of the proposed variance request, the ability to achieve no-net-loss of ecological function principles, and capability of accommodating preferred shoreline uses in the future if the variance and cumulative potential requests occur.
- 39.10.8.1 It is expected that if similar considerations were granted to all landowners within this subdivision with similar circumstances, that the cumulative effect would still be consistent with the Shoreline Management Act due to the minor nature of development, and the fact that this may be the only occurrence of these specific circumstances on the lake. This is one of the last lots within this subdivision to propose pier development.
- 39.10.8.2 Any future private projects would be required to apply mitigation sequencing and assure no loss of ecological function. Based on the mitigation requirements of the CCSMP and low potential for similar projects, no negative cumulative effects are anticipated.
- 39.10.8.3 There is no existing moorage on site. The proposed development would provide a pier, moorage, and water access to their property via Lake Chelan. Mitigation sequencing has been applied. No adverse

impacts will remain after applying the second and fifth priorities of mitigation sequencing.

- 39.10.8.4 Lake Chelan is only at its full level from July 1-Labor Day—two months. The lake is typically drawn down 15 ft during the winter and spring. The fluctuating water level on Lake Chelan speaks to the minimal impacts to the aquatic environment and lack of natural ecological function. The project avoids adverse impacts through minimization design components and compensatory mitigation. The size of the pier has been minimized to be the least impacting as possible while still providing adequate moorage. The width of the first two section of the pier addition have been minimized to 4 ft and 5 ft, whereas the Chelan County Shoreline Master Program (CCSMP) would allow up to 8 ft wide for the entire pier addition.
- 39.10.8.5 The project would entail an increase of approximately 445 sq.ft. of new overwater coverage (320 sq.ft. joint-use pier addition + 125 sq.ft. boatlift = 445 sq.ft.).
- 39.10.8.6 Per USACE and Chelan County requirements, minimization measures are proposed for the joint-use pier addition. The proposed pier would have a section constructed at a 4 ft width, and a section constructed at a 5 ft width, as well as grating installed atop the entire structure. This grating more than mitigates for any assumed adverse impacts to the shoreline ecological function, and would equate to the required County mitigation ratio of 1:1 for the proposed new overwater coverage. Per USACE requirements, the total joint-use pier's overwater coverage that exceeds 450 sq. ft will be mitigated for through additional compensatory mitigation at a 1:0.5 ratio via a proposed native vegetation planting plan. An additional 141.5 sq.ft. of mitigation is proposed for the proposed pier addition.
- 39.10.8.7 The proposed boatlift and existing PWC lifts do not create new adverse impacts to the shoreline ecological function due to their size and open design. The CCSMP does not require mitigation for any watercraft lifts. Per USACE requirements, the proposed boatlift is considered first lift one site, and the relocated PWC lift is the second lift on the uplake lot. The first boatlift on either lot does not require mitigation. In addition to the existing grated surface on the PWC platform, this second lift will be mitigated for via compensatory mitigation with the installation of a 180 sq. ft native vegetation planting plan.
- 39.10.8.8 In total, 321.5 sq.ft. of mitigation is required by USACE. The native vegetation planting plan would be accomplished by planting seven (46) shrubs, for a total of 322 sq.ft. This mitigation will be split between the two lots, with a 182 sq.ft. planting area on Lot 11, and a 140 sq.ft. planting area on Lot 12. The shrubs would be either coyote willow (*Salix exigua*) or Woods' rose (*Rosa woodsii*). The planting areas would be as close to the OHWM of the lake as possible, within 10 ft of the existing seawall, in an area where there is no native vegetation. This mitigation more than mitigates for any assumed adverse impacts to the shoreline ecological function.
- 39.10.8.9 The proposed development would have no negative impact on the water quality, water supply, recreation, or aesthetics of Lake Chelan. Extreme care would be taken to prevent any petroleum products,

chemicals, or other toxic or deleterious materials from entering the water. If a spill were to occur, work would be stopped immediately, steps would be taken to contain the material, and appropriate agencies would be notified.

- 39.10.8.10 Potential impacts to fish and aquatic life would be sufficiently minimized by conformance with the conservation, minimization and mitigation measures found in the USACE RGP4 and CCSMP regulations. The proposed development would have no negative impact on water quality, water supply, recreation, or aesthetics of Lake Chelan. Extreme care would be taken to prevent any petroleum products, chemicals, or other toxic or deleterious materials from entering the water. If a spill were to occur, work would be stopped immediately, steps would be taken to contain the material, and appropriate agencies would be notified.
- 39.10.8.11 The entire project results in a no net loss of ecological function, remain consistent with the policies of the Act and shall not cause substantial adverse effects to the shoreline environment.
- 39.10.8.12 Hearing Examiner Finding: A 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 allow for a joint use pier to exceed the size requirements of the CCSMP on the subject properties would not be anticipated to constitute the granting of a special privilege as other properties in close proximity are developed with joint use docks as well. 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.
- 41. 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.
- 42. An open record public hearing after due legal notice was held via Zoom on September 6, 2023.
- 43. The entire Planning staff file was admitted into the record.
- 44. Appearing and testifying on behalf of the applicant was Anne Hessburg. Ms. Hessburg testified that she was an agent authorized to appear and speak on behalf of the property owner and Applicant. Ms. Hessburg indicated that she had no objection to any of the proposed Conditions of Approval and agreed with all representations in the staff report.
- 45. No member of the public testified at this hearing.
- 46. The Chelan County Hearing Examiner considered all evidence within the record in rendering this decision.
- 47. 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 8 day of September, 2023.

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:
