

178 FERC ¶ 62,047
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility District No. 1 of Chelan County

Project No. 637-119

ORDER MODIFYING AND APPROVING
NON-PROJECT USE OF PROJECT LANDS AND WATERS

(January 24, 2022)

1. On August 12, 2021, Public Utility District No. 1 of Chelan County (Chelan PUD), licensee for the Lake Chelan Hydroelectric Project No. 637,¹ filed an application requesting authorization to permit Tripen, Incorporated (Tripen) to install residential and commercial docks and access steps associated with Chelan Bay Development. The Lake Chelan Hydroelectric Project is located in Chelan County, Washington. The project occupies federal lands administered by the U.S. Forest Service (Forest Service) and U.S. Department of the Interior, National Park Service (NPS).

Background

2. The Commission issued a license to Chelan PUD for the operation and maintenance of the Lake Chelan Hydroelectric Project on November 6, 2006. Lake Chelan is a 32,560-acre reservoir at the normal maximum water surface elevation of 1,100 feet above mean sea level (msl) contour elevation; the project boundary follows the 1,100 feet above msl contour elevation. In the area of Chelan Bay Development, Tripen owns all lands above the 1,100 feet above msl contour elevation.²

3. Chelan Bay Development is a new (unconstructed) mixed-use development with 12 residential lots and a commercial area on three manmade peninsulas that were created in the 1960s. The peninsulas are outlined with rip rap that slopes into the lake.

¹ Order on Offer of Settlement and Issuing New License (117 FERC ¶ 62,129), issued November 6, 2006.

² Chelan County Assessor (<https://www.co.chelan.wa.us/assessor>)

Proposal

4. Within the project boundary, Tripen is proposing 6 residential docks (to accommodate 12 watercraft), rock access steps into the lake for 11 of the 12 residential lots, a commercial dock, and rock access steps associated with a public access area that is not within the project boundary. Each residential dock would serve two lots and accommodate two watercraft; two U-shaped docks would be shared by residential lots 1 and 4 and lots 5 and 8, and four T-shaped docks would be shared by residential lots 2 and 3, lots 6 and 7, lots 9 and 10, and lots 11 and 12. The U-shaped docks would be 63 feet long by 6 feet wide, accessed by 6 feet by 6 feet walkways on each end. Three lakeward facing T-docks would be 56 feet long by 6 feet wide, accessed by 6 feet wide by 23 feet long walkways. A channel facing T-dock would be 69 feet long by 6 feet wide and accessed by a 6 feet by 6 feet walkway. The residential docks would attach to on-land concrete abutments that are not within the project boundary. Flat rocks would be installed on top of the existing rip rap to create the residential access steps.

5. A pier (8 feet wide by 32 feet long) would attach a gangway (6 feet wide by 80 feet long) to an L-shaped commercial dock; each arm of the L-shaped dock would be 8 feet wide by 120 feet long and one arm would have 4 finger docks (each 4 feet wide by 28 feet long). The pier would be attached to an on-land concrete abutment that is not within the project boundary. The commercial dock would accommodate approximately 12 watercraft for short-term use by patrons of the future upland commercial use. The docks would be partially constructed off-site and delivered to the site for installation.

6. Rock access steps associated with a public access area would be installed to the west of the peninsulas. Flat rocks would be installed on top of the existing rip rap to create the public access steps. Figure 1 shows the locations of the residential and commercial docks and residential access steps associated with Chelan Bay Development.

Consultation

7. Tripen held a meeting with Chelan PUD and government agencies on April 18, 2019, and posted a public notice sign at the Chelan Bay Development property and at Chelan City Hall on October 2, 2019. A public notice was also mailed on October 2, 2019 to the U.S. Army Corps of Engineers (Corps), Washington State Department of Natural Resources, Washington State Department of Ecology

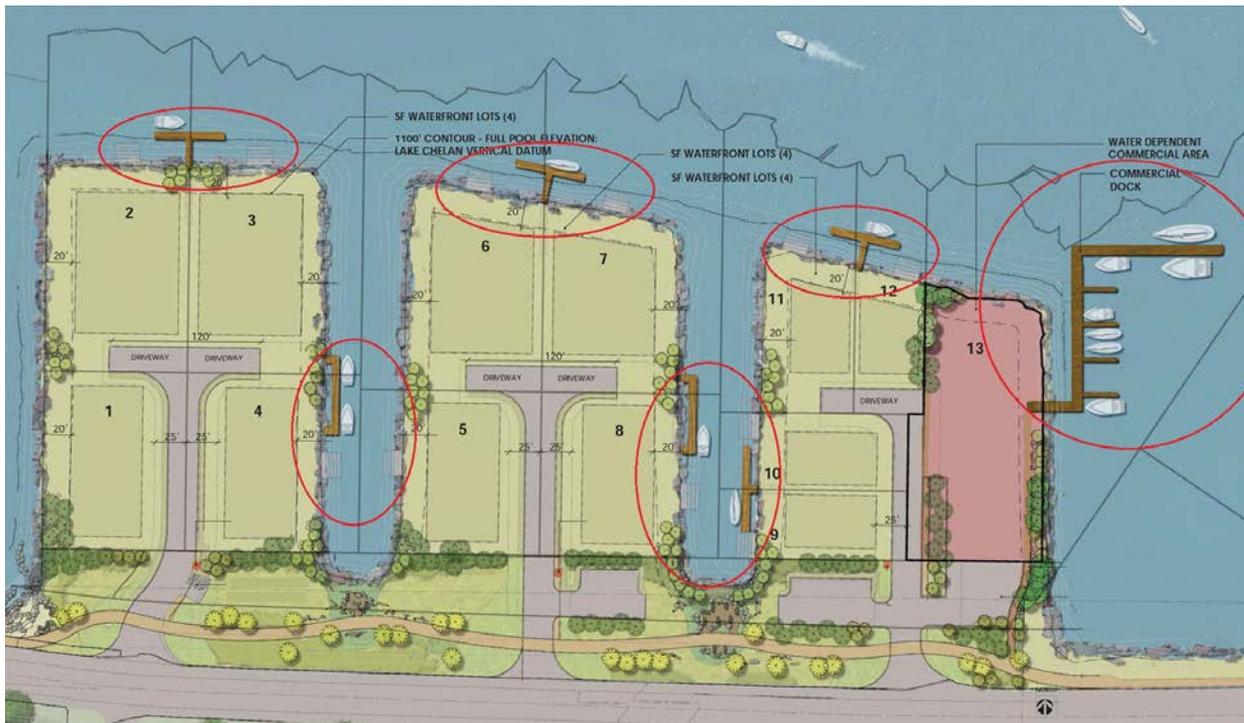


Figure 1: Chelan Bay Development (source: chelanbay.com, edited by Commission staff)

(Washington Ecology), the State Environmental Policy Act (SEPA) Register,³ Washington State Department of Fish and Wildlife (Washington DFW), Washington State Department of Transportation, City of Chelan (Public Works and Building Department), Confederated Tribes of the Colville Reservation (Confederated Tribes), and all property owners within 300 feet of the proposed development, and published in the Lake Chelan Mirror. A public hearing was held on October 6, 2020. A notice of the public hearing was mailed to all parties of record and posted at the Chelan Bay Development site and at Chelan City Hall, on September 22, 2020, and published in the Lake Chelan Mirror on September 23, 2020.

8. Chelan PUD requested comments on the proposed residential and commercial docks and access steps from the Lake Chelan Cultural, Recreation, Wildlife, and Fisheries forums.⁴ Washington DFW responded to Chelan PUD on July 7, 2021 with no

³ Washington Ecology publishes an online SEPA Register that includes all SEPA and National Environmental Policy Act documents that have been submitted to Ecology.

⁴ The forums were established in the project's settlement agreement for relicensing to ensure proposed work is compatible with Commission-approved management plans and project operations. Some agencies are in multiple forums. The agencies in the

(continued)

concerns, and noted it issued Hydraulic Project Approvals for Chelan Bay Development. Chelan PUD did not receive any other comments.

9. Tripen received permits for the proposed residential and commercial docks and access steps from the Corps, Washington Ecology, Washington DFW, and the City of Chelan for Chelan Bay Development. The City of Chelan issued a Shoreline Substantial Development Permit on October 30, 2020. Washington DFW issued a permit for the commercial dock and public access area steps on December 2, 2020. Washington DFW issued six separate residential permits (Hydraulic Project Approvals) for the residential docks and access steps on February 17, 2021.

10. The Corps issued a permit for the commercial dock and steps associated with the public access area on January 10, 2021 (Nationwide Permit 18, *Minor Discharges*). The Corps issued six separate permits for the residential docks and access steps on March 10, 2021 (Regional General Permit 4, *Maintenance, Modification, Construction, and Retention of Overwater Structures in Southern Lake Chelan*).

11. The Corps requested comments from the Confederated Tribes regarding the commercial dock and steps associated with the public access area on December 2, 2019. On March 2, 2020, the Confederated Tribes responded with no concerns provided two specific sites are avoided. On February 25, 2021, the Corps requested comments from the Confederated Tribes regarding the residential docks; the Confederated Tribes concurred with permitting the residential docks on March 1, 2021. Washington DAHP made a determination of no effect to historic properties on March 23, 2015, and the Corps concluded Section 106 Consultation on August 2, 2017. Washington DAHP did not respond to Chelan PUD's request for comments from the forums.

forums include the Forest Service, FWS, NPS, U.S. Bureau of Indian Affairs, Bureau of Land Management, Washington DFW, Washington Ecology, Washington State Department of Archaeology and Historic Preservation (Washington DAHP), Washington State Parks and Recreation Commission, Washington Interagency Committee for Outdoor Recreation, City of Chelan, Colville Tribes and Yakama Nation, Mason Parks and Recreation Department, Lake Chelan Recreation Association, Lake Chelan Sportsman's Association, Wenatchee Sportsman Association, North Central Washington Mule Deer Foundation, Foundation for North American Wild Sheep, Audubon Society, National Wild Turkey Federation, and America Whitewater.

Discussion

12. Commission staff has reviewed the application pursuant to the Federal Power Act's comprehensive development/public interest standard,⁵ and agency comments on the proposed non-project use application. While our regulations provide that the approval of proposals to authorize use of project lands or waters for purposes including boat docks are categorically excluded from the need to prepare an environmental document,⁶ we have nonetheless examined environmental issues related to the actions proposed here.

13. Installation of the residential and commercial docks would involve driving supports into the lakebed, causing temporary sediment disturbance that could have short term effects on aquatic species and water quality. These effects would be minimal due to the small footprint of the area. Residential docks that serve two lots minimizes the number of proposed docks. No long-term environmental effects are anticipated from the proposed docks and access steps.

14. Chelan Bay Development is consistent with existing commercial and residential uses in the vicinity and would not interfere with project operations or affect navigation. Negative effects from development are unlikely compared to undeveloped properties in less urban areas of the lake. Waterward of the 1,100 feet above msl contour elevation, the lakebed is moderately sloped, rocky, and unvegetated. There is no significant riparian vegetation on the property, and it is not a natural accumulation point for woody debris. The annual drawdown of the lake prevents the establishment of aquatic vegetation that could support macroinvertebrate communities.

15. None of the consulted agencies were opposed to the proposal. Consistent with permits issued by the Corps and Washington DFW, Tripen has agreed to use grated surfaces on all docks. Grated surfaces avoid the impacts of shading the water which could affect native aquatic vegetation and migrating fish. Chelan PUD is responsible for ensuring that Chelan Bay Development adheres to all permit conditions. The application includes location point data for the proposed non-project use. Chelan PUD's request for

⁵ Pursuant to Part I of the Federal Power Act, the Commission is required to license projects that best result in the comprehensive development of a waterway. To determine this, it is necessary for the Commission to determine to what extent proposals relate to project effects or project purposes. Policy Statement on Hydropower Licensing Settlements, 116 FERC ¶ 61,270, at 62,087 (2006).

⁶ See 18 C.F.R. § 380.4(a)(19) (2021).

authorization to permit residential and commercial docks and access steps associated with Chelan Bay Development should be approved, as modified below.

16. On October 11, 2011, Chelan PUD filed a Traditional Cultural Property Management Plan pursuant to Article 401 and Appendix A, Article 10(f) of the project license.⁷ Although no cultural resources have been identified in the vicinity of the area to be developed, the potential does exist for the discovery of cultural resources during the proposed installation, operation, and/or maintenance activities. Therefore, Chelan PUD should include in the intended permit, conditions to protect previously undiscovered cultural resources. The conditions should require that, if a previously undiscovered cultural resource site is discovered during installation, operation, and/or maintenance of the facilities, Tripen should immediately cease all work at the site and immediately contact Chelan PUD. Chelan PUD should then follow the provisions to protect historic properties as set forth in the adverse effects and unevaluated traditional cultural properties (Sections 6 through 9) of the approved Traditional Cultural Properties Management Plan.

17. Chelan PUD has an overall obligation to ensure that all non-project uses and occupancies of project lands and waters it authorizes are not inconsistent with the purposes of the project, including public recreation and natural resources protection. In this regard, Chelan PUD should include the following conditions in any permit it issues to Tripen: (1) Tripen's use and occupancy of project lands and waters must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (2) Tripen must take all reasonable precautions so that the installation, operation, and maintenance of the permitted facilities occurs in a manner that protects the scenic, recreational, and other environmental values of the project; and (3) Tripen must not unduly restrict public access to project waters.

18. To keep the Commission apprised of completion of the proposed non-project use, and to ensure it has been installed as approved in this order, within two years from the date of this order, Chelan PUD should file a construction completion report, including photographs, for the non-project use. If the non-project use is partially completed or installation has not begun, Chelan PUD should file an extension of time request to document completion of the non-project use. The request should propose a schedule for filing the construction completion report based on expected completion of the non-project use, and include a description of the key factors that were considered in the development of the schedule.

⁷ Order Approving Historic Properties Management Plan (137 FERC ¶ 62,216), issued December 8, 2011.

The Director orders:

(A) Public Utility District No. 1 of Chelan County's application, filed August 12, 2021, requesting Commission authorization to permit Tripen, Incorporated to install residential and commercial docks and access steps associated with Chelan Bay Development, at the Lake Chelan Hydroelectric Project No. 637, is approved, as modified by paragraphs (B) and (C), below.

(B) Public Utility District No. 1 of Chelan County must include in any permit issued under this authorization the following conditions: 1) Tripen, Incorporated's use of project lands and waters must not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; 2) Tripen, Incorporated must take all reasonable precautions to insure that the operation and maintenance of the structures and facilities covered by the permit will occur in a manner that protect the scenic, recreational, and other environmental values of the project; and 3) Tripen, Incorporated must not unduly restrict public access to project lands and waters.

(C) Consistent with the project's Traditional Cultural Properties Management Plan, filed with the Commission on December 8, 2011, Public Utility District No. 1 of Chelan County (Chelan PUD) must include, as a condition of any permit issued under this application, a condition requiring Tripen, Incorporated to cease all activities immediately upon finding any unanticipated historic or cultural resource, and to immediately contact Chelan PUD. Chelan PUD must immediately follow the provisions stipulated in its Traditional Cultural Properties Management Plan.

(D) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825*l*, and the Commission's regulations at 18 C.F.R. § 385.713 (2021). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Robert J. Fletcher
Land Resources Branch
Division of Hydropower Administration
and Compliance