

SHORELINE MANAGEMENT PERMIT

ACTION SHEET

Application #: SDP 2019-10, SEPA 2019-16, VAR2019-06, SUB 2019-16
Administering Agency City of Chelan Department of Planning and Community Development

Type of Permits:

- Shoreline Substantial Development Permit
- Zoning Variance
- Subdivision Application

Action:

<input checked="" type="checkbox"/> Approved (SSDP 2019-10)	<input type="checkbox"/> Denied
<input type="checkbox"/> Approved (VAR 2019-06)	<input checked="" type="checkbox"/> Denied
<input checked="" type="checkbox"/> Approved (SUB 2019-16)	<input type="checkbox"/> Denied

October 30, 2020

Date of Action:

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:

Tripen Incorporated
c/o Larry Heikel
PO Box 598
Wenatchee, WA 98801

This request is for a Shoreline Substantial Development Permit (SSDP), Zoning Code Variance and a Subdivision into 27 lots and one tract for a mixed-use water-dependent commercial and residential development. The project includes public use and access areas, water-dependent commercial space open to the public including a dock and 25 private residential lots with joint-use docks. The entire width of the southern portion of the property will be a public use area that is 38,000 square feet (0.87 acre). A public trail will be constructed along the full frontage of the property. The trail will include two viewing platforms and a beach area providing access into Lake Chelan. Underground utilities and roads will be installed to service the properties, all of which are within shoreline jurisdiction.

Upon the following property: West Woodin Avenue (SR 97A) east for Water Street and west of East Street. No street address has been assigned.

The tax parcel number is 272214-662-228. Legally described as all of block 9, Plat of the Town of Lake Park, Chelan County Washington, together with that portion of vacated Boulevard Avenue

Within 200 feet of Lake Chelan and/or its associated wetlands.

The project would be within a shoreline of statewide significance (RCW 90.58.030). The project will be located within a single family residential shoreline designation.

The City of Chelan Shoreline Master Program is applicable to this development.

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

CONDITIONS OF APPROVAL

All conditions imposed by this decision shall be binding on the applicant, which includes the owner or owners of the properties, heirs, assigns, and successors.

1. The applicant shall fully execute the Mitigation Plan dated July 30, 2019, except as amended herein as to the number of single family dwelling units accessed by a private road, and by number of docks.
2. Mitigation monitoring is required for a five-year period following installation of plant materials.
3. Final joint-use dock agreements must be recorded with the Chelan County Auditor prior to issuance of building permits for docks.
4. The Declaration of Covenants, Conditions and Restrictions and Restrictions of Chelan Bay Homeowners Association must be recorded with the Chelan County Auditor’s Office.
5. The Applicant shall obtain a fill and grade permit from City of Chelan Building department and shall include the public swim area on the western “finger”.
6. The Applicant shall obtain a Construction Stormwater General Permit from Department of Ecology.
7. All improvements shall comply with the Public Works Development Standards.
8. The Applicant shall submit final engineering for review and approval prior to project construction.
9. All improvements for public use must be constructed and installed or bonded for prior to final plat approval.
10. The Applicant shall locate utilities prior to commencement of any construction activities.

11. The project shall proceed substantially with the preliminary plat and preliminary engineering both dated July 2019, except as amended herein as to the number of single family dwelling units that can be accessed by a private road, and the number and location of joint use docks.
12. The Applicant shall comply with the Transportation Impact Study recommendations prepared by Transportation Engineering NorthWest, LLC updated February 21, 2020.
12. The Maintenance Agreement for the Greenbelt shall be reviewed by the City Attorney and Parks Department prior to approval by City Council.
13. Parking areas shall comply with CMC 17.60, Landscaping, along with the Chelan Bay Mitigation Plan, except as related to the number of single family dwelling units served by each private road. In the event of a conflict between CMC 17.60 and the Chelan Bay Mitigation Plan, the Mitigation Plan will control.
14. Physical public lake access will be provided on the western "finger" within the Resolution No. 534 public easement area. A site plan approved by the Planning and Parks department is required.
15. The applicant shall prepare all the necessary legal documents and drawings to transfer the shoreline physical public access area or area proposed by the applicant to the City. Any dedication or property transfer to the City of Chelan shall be reviewed by the City Attorney and approved by City Council. The applicant shall submit the necessary documents to the City prior to final plat application submittal. The proposed parcel or tract may deviate from the Waterfront Commercial zoning dimensional standards including lot size and dimensions for the public access area. A note shall be placed on the final plat indicating that only structures for the public's use, parking and/or utility infrastructure may be located within the public access areas including the parcel or tract and public easement.
16. The Lakeside Trail shall be constructed or bonded for prior to final plat approval.
17. The trail design shall be consistent with the Lakeside Trail design project prepared by SCJ Alliance for the City and the Chelan Bay Public Access Conceptual Plans including connection to the public access areas to Lake Chelan, proposed public outlooks and commercial dock. The Lakeside Trail shall be part of the required frontage improvements along SR97A and must be approved by the Planning and Public Works departments prior to construction.
18. Lake Chelan Public Access and Lakeside Trail signage shall be installed and be consistent with the City's Wayfinding Sign Program.
19. Environmental Review, SEPA, including a Traffic Impact Study shall be required for future commercial development land use application(s).
20. Final Plat drawings shall include all public and utility easements.
21. Fireflow shall be provided in accordance with the International Fire Code.
22. The Project shall comply with Public Works review letter dated March 6, 2019 and Building review comments, except as modified herein as to the number of lots.

23. A stormwater plan shall be submitted to Public Works prior to any construction activity and comply with the Public Works Development Standards and Eastern Washington Stormwater Manual.
24. Prior to any ground disturbance, a dust control mitigation plan shall be submitted to the Building department for approval. The plan shall include contact information and procedures for “after hours” and weekend dust control.
25. Erosion control measures per the General Storm Water Permit shall be in place prior to any construction activity. The City must be notified immediately if any runoff into Lake Chelan occurs.
26. SP2010-01 Goodfellow Fingers decision is rescinded.
27. Pursuant to City of Chelan Development Standards Manual Section 5C.140(2), each private road on each “finger” shall provide access to no more than four single family dwelling units.
28. The Applicant shall submit revised site plans, including dock plans, demonstrating compliance with Condition of Approval No. 28.
29. The commercial dock shall be open to the public.
30. Each permit may expire pursuant to the Chelan Municipal Code, the Revised Code of Washington, the Shoreline Master Program, and the Shoreline Management Act.

FINDINGS OF FACT

1. This request is for a Shoreline Substantial Development Permit (SSDP), Zoning Code Variance and a Subdivision into 27 lots and one tract for a mixed-use water-dependent commercial and residential development. The proposal includes public use and access areas, water-dependent commercial space open to the public including a dock and 25 private residential lots with joint-use docks. The entire width of the southern portion of the property will be a public use area that is 38,000 square feet (0.87 acre). A public trail will be constructed along the full frontage of the property. The trail will include two viewing platforms and a beach area providing access into Lake Chelan. Underground utilities and roads will be installed to service the properties; all of which are within shoreline jurisdiction.
2. The subject property is located on West Woodin Avenue (SR 97A) east for Water Street and west of East Street. No street address has been assigned.
3. The tax parcel number is 272214-662-228. Legally described as all of block 9, Plat of the Town of Lake Park, Chelan County Washington, together with that portion of vacated Boulevard Avenue.
4. The applicant is Tripen Incorporated, represented by Larry Heikel, PO Box 598, Wenatchee, WA 98801.
5. The authorized agent is Ryan Walker; Grette Associates LLC, of 151 S. Worthen St., Ste 101, Wenatchee, WA 98801.

6. A pre-application conference was held on April 18, 2019.
7. The application was submitted on July 31, 2019 and a letter of complete application was issued on August 28, 2019.
8. The application materials included:
 - 8.1 Preliminary Plat Application
 - 8.2 Preliminary Plat Map
 - 8.3 Preliminary engineering
 - 8.4 Traffic Impact Analysis
 - 8.5 JARPA
 - 8.6 SEPA
 - 8.7 Development Regulation Variance
 - 8.8 Critical Area Checklist
 - 8.9 Mitigation Plan
 - 8.10 SMP Compliance Memorandum
 - 8.11 Vegetation Survey
 - 8.12 Chelan Bay – Concept Plan (public access) dated September 13, 2019
 - 8.13 Public Lookout Options A & B dated December 4, 2019
9. The project required environmental review as provided for under the State Environmental Policy Act and CMC 14.06. A Determination of Nonsignificance (DNS) was issued on September 22, 2020 under WAC 197-11-340(2) with a 14-day public comment period closing on October 5, 2020. The Notice of Application stated the Optional DNS process in WAC 197-11-355 was being used. SEPA rules allow for the City to issue the final determination with an additional 14-day comment period. The final DNS included as hearing exhibit No. 9.
10. The applicant submitted a Traffic Impact Study prepared by Transportation Engineering NorthWest, LLC, dated July 2, 2019.
11. The applicant submitted a Mitigation Plan prepared by Grette Associates Environmental Consultants, LLC, dated July 30, 2019.
12. The applicant submitted a Vegetation Assessment Technical Memorandum prepared by Grette Associates Environmental Consultants, LLC, dated January 17, 2019.
13. The project requires a shoreline substantial development permit in accordance with the City of Chelan Shoreline Master Program (CSMP) Section 7.5.1.
14. The CSMP identifies the Shoreline Environment Designation as High Intensity.
15. The purpose of the High Intensity environment is to provide for high-intensity water-oriented commercial, transportation and industrial uses.
16. Within the High Intensity environment designation, mixed-use commercial and mixed-use residential are listed as permitted uses per Table 3-1.
17. Single and multi-family developments are allowed in the High Intensity environment as part of a mixed-use development with primary water-oriented uses.

18. A water-oriented use is one that is a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.
19. The property is located within the Commercial Waterfront (CW) zoning district as regulated by CMC 17.40.
20. The CW zoning district permits mixed-use developments that include water-dependent and water oriented commercial uses together with single-family or multi-family uses while promoting public access for significant numbers of the public.
21. The CW zoning district permits commercial or public water transportation facilities, marina facilities and a wide variety of commercial uses.
22. The southern portion of the property includes portions of Boulevard Avenue Vacated by Ordinance No. 24 passed by the Town of Lakeside in 1927. Said vacation includes a public easement over the vacated avenue for access over the lands to Lake Chelan at all water levels.
23. On August 23, 1977, the City of Chelan passed Resolution No. 534 reaffirming the public's right of access to Lake Chelan at all stages of water over Boulevard Avenue and further resolved that no use, development or occupancy will be permitted which will in any way interfere with the free and unrestricted access by the public to Lake Chelan.
24. CSMP 4.3.2 (N) allows the Shoreline Administrator to approve a re-arrangement of existing public easement locations to achieve improved shoreline public access and site plan that more effectively meets the Shoreline Management Act and CSMP goals and polices.
25. The Chelan Bay SSDP application materials include public lake access conceptual designs that provide effective shoreline public access providing for visual and physical lake access to a greater extent than the Resolution No. 534 "walking" easement accomplishes.
26. An easement for waterway over vacated Boulevard Avenue between the westerly line of Pine Street extended and the center of Warf Street appurtenant to lots 1 through 4, Block 4, of the Plat of Lake Park and lots 1 through 9 in Block 8, Plat of Lake Park is recorded under AFN 591768.
27. All easements are accurately depicted on the preliminary plat submitted with the application.
28. The Washington State Supreme Court has ruled that this property is legal fill, allowed to remain in place pursuant to RCW 90.58.270 (the Savings Clause), which consented to the placement of all pre-1969 fills.
29. Public access is defined by the CSMP as the public's ability to reach and use the State's public waters, the water/land interface, and associated shoreline area. It includes physical access that is either lateral (areas paralleling the shore) or perpendicular (an easement or public corridor to the shore), and visual access facilitated by means such as scenic roads and overlooks, viewing platform, and other public sites or facilities.
30. Public access is a preferred use per the Shoreline Management Act.

31. A commercial area is proposed on the east finger that will have a commercial dock promoting public access for members of the public.
32. Marinas, boating facilities and moorage facilities are water-dependent by reason of the intrinsic nature of their operation. The commercial dock will allow the public to access the commercial area from the water by boat. Patrons of the business arriving by land will be able to access the lake by the commercial dock.
33. The entire width of the southern portion of the property within Boulevard Avenue will be a public use area that is 38,000 square feet (0.87 acre). A public trail will be constructed along the full frontage of the property. The trail will include two viewing platforms and access to swimming. Parks and viewing platforms are defined as water-enjoyment uses.
34. Direct physical access to Lake Chelan will be improved for public use on the southwest corner of the project within Boulevard Avenue and the West Woodin Avenue right-of-way.
35. As conditioned, the applicant shall improve a "swim area" located within the public easement, Resolution No. 534, on the western most "finger" for direct physical access to Lake Chelan. The applicant has agreed to this proposed condition if the area is transferred to the City by Quit Claim Deed.
36. The public access location will connect to the trail system and be improved with flat rocks and sand to support a direct path into the lake at all water levels.
37. As designed, the project implements the CSMP Shoreline Public Access Plan.
38. The City of Chelan Lakeside Trail Plan encourages the expansion of the Lakeside Trail along the south shore of Lake Chelan within the vicinity of SR 97A / West Woodin Ave, segment I.
39. The project includes construction of a public trail along the entire width of the property for approximately 790 linear feet constructed to the standards required by CSMP 4.3.2.J and to match the dimensions of existing portions of the Lakeside Trail.
40. The Parks, Recreation and Open Space Plan specifically identifies the subject property and the Lakeshore Trail. The plan desires for shoreline access and a grassy play area and some parking on this specific site.
41. The entire width of the property adjacent to West Woodin Avenue will be open to the public which will be identified by conspicuous permanent signage and will be improved with a public trail, a grass and landscaped area and parking consistent with the Parks, Recreation and Open Space Plan.
42. CSMP Section 4.4 requires the conservation of vegetation by designing shoreline developments to minimize removal of significant trees and native vegetation.
43. A vegetation survey was performed by Grette Associates, LLC in June of 2018. During the survey, it was determined that no significant trees or mature native vegetation are located on the property. The interior of the property is composed of a sparse mixture of non-irrigated native and non-native weedy herbaceous species and grasses.

44. Building areas will be concentrated within the interior portions of the property and outside of the 20 foot shoreline standard setback for high-intensity uses per CSMP Table 4.4-1.
45. A public trail leading to the commercial area is proposed on the east side of the east finger. This trail will allow public access connecting from the Lakeside Trail to commercial businesses located on the property. An administrative modification to reduce the buffer to 10-15 feet from the high-water mark is included in the application.
46. Reduced setbacks may be applied for using setback reduction options No. 4 and No. 8 of CSMP Table 4.4-3 to allow a buffer reduction to 10 feet from the high-water mark with the implementation of a native vegetation enhancement plan. The City of Chelan Restoration Plan identifies "improvements to nearshore native vegetative cover" as a type of project to achieve local restoration goals which qualifies for buffer reduction option No. 8.
47. The Mitigation Plan submitted with this application includes native vegetation enhancement adjacent to the trail which meets the buffer reduction requirements. In total 14 native trees and 24 native shrubs are proposed in this area totaling 1,980 square feet of mitigation planting.
48. Per CSMP 4.4.3.G.1, those portions of water-dependent or public access development that require improvements or uses adjacent to the water's edge, such as water access or other similar activities, are allowed in the setback. The water-dependent commercial area will have an improved access area to the commercial dock and to the lake consistent with this section.
49. A Mitigation Plan has been submitted that addresses mitigation sequencing and includes a significant native vegetation planting plan to add trees, shrubs and grass to the property to improve ecological function and prevent surface erosion.
50. The Mitigation Plan meets the requirements of CSMP Sections 4.2 and 4.4 to ensure no net loss of shoreline ecological function.
51. CSMP Section 4.5 requires new development to manage short-term and long-term stormwater runoff to avoid and minimize potential adverse effects on shoreline ecological function.
52. The preliminary engineering submitted with the application includes measures for stormwater management and shoreline protection. A final stormwater plan must be submitted and approved consistent with the Stormwater Management Manual for Eastern Washington prior to ground disturbance.
53. CSMP Section 5.1 requires shoreline development to comply with design features for compatibility, including incorporating building mechanical equipment into architectural features, screening outdoor storage, and preventing light pollution.
54. Signage must comply with CSMP Section 5.1.G, CMC 17.58 and CMC 17.62.
55. Prior to issuance of building permits the shoreline development plans will be reviewed for consistency with the general upland shoreline modification and use regulations.
56. Joint-use docks are proposed to serve the residential properties. The number of joint-use docks will depend on the number of single family dwelling units (up to four single family dwelling units per private road) the Applicant elects to develop in the revised site plans. The joint-use docks

shall be a maximum of 450 square feet each and will meet the dimensional requirements of CSMP Table 5.5-2. The surface of all joint-use docks will be grated to allow maximum light transmittance into the water. A draft joint-use agreement addressing maintenance, and access for each dock has been submitted with the application. A final agreement will be recorded with the Chelan County Auditor prior to issuance of building permits for the docks.

57. The commercial dock shall meet the standards of CSMP Table 5.5-1. The dock will be 3,298 square feet extending 145 feet from the OHWM with a grated surface on the entire structure.
58. An assessment of the demand for new boating facilities was submitted as part of the SMP Compliance Memorandum.
59. The lake access area will be comprised of natural material including rock and sand which will be the minimum necessary to construct a path connecting to the lake at all water levels.
60. Water-dependent commercial, mixed-use commercial and mixed-use residential uses are permitted in the High Intensity environment per Table 3-1 of the CSMP.
61. Residential uses as part of a mixed-use development may be located with water-oriented commercial uses, provided: one or more water dependent use is included; water-dependent commercial uses have preferential location along the shoreline; the use is permitted by the underlying zoning; public access is provided for significant number of persons and/or ecological restoration is provided; and the project complies with the residential regulations of the CSMP.
62. The commercial area proposed as a portion of this project includes service for customers who arrive by boat, and by foot.
63. The commercial dock allows significant number of the public to access the lake which cannot exist in a location that is not adjacent to the water.
64. The water-dependent commercial area has a preferential location on the shoreline. It is planned in the most protected and calm area of the property.
65. The commercial area is intended to provide public access both to and from the water. There are no other commercial developments in the City of Chelan that provide this type of service with access from the water to a commercial area.
66. The Mitigation Plan, including the native vegetation planting plan, will provide ecological restoration as a public benefit.
67. The underlying Commercial Waterfront (CW) zone allows mixed-use development that include water-dependent and water-oriented commercial uses with single-family uses while promoting public access for significant numbers of the public and providing ecological restoration is a public benefit.
68. The commercial area and public open space associated with the public trail, viewing platforms and direct access to the lake comprise 34% of the subject property. The opportunity for the public to arrive from the water to enjoy the public use areas is a significant public benefit of this project.
69. CSMP Section 5.14.2 specifies regulations for residential subdivisions and plats.

70. Single-family residences are a priority use in the shoreline when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.
71. The application materials demonstrate the residential uses include all the necessary facilities for water supply, wastewater, stormwater, solid waste, access and utilities that will not result in harmful effects on the shoreline or waters.
72. The shoreline is currently stable. The location of the proposed residences in a revised site plan will not result in the need for new shoreline stabilization.
73. The revised preliminary plat shall identify the locations for public access, joint-use docks and utility easements where necessary. The lots will be configured to avoid the need for future shoreline variances. All residences will meet the required setback or appropriate administrative reduction as allowed in the CSMP.
74. The entire property is located within shoreline jurisdiction. Therefore, roads and parking facilities cannot be located outside of jurisdiction per CSMP Section 5.17.
75. The impact of the roads has been minimized by planning them in the middle of each finger to locate them as far from the water as possible. A variance request has been submitted to allow private roads which would eliminate a large 50-foot-wide right-of-way. Limiting the right-of-way allows residences to be located at the appropriate shoreline setback to protect ecological function. However, the Chelan Municipal Code limits the number of single family dwelling units that may be accessed by a private road.
76. The proposed parking facilities are intended to support the commercial and public use area.
77. Parking facilities are allowed in shoreline jurisdiction to support a use or activity listed in Table 3-1. Commercial uses and public access are listed in Table 3-1 as permitted uses.
78. Landscaping of the parking areas with native vegetation will be provided.
79. The parking will meet the required 20-foot setback and include bioswales for stormwater treatment.
80. Utilities will be installed as part of this project as an accessory to the primary permitted commercial, public and residential uses per CSMP Section 5.18. All utilities will be constructed to meet all adopted engineering standards, will be located underground and all disturbed areas will be restored as part of the mitigation plan.
81. The applicant has submitted a Mitigation Plan prepared by a Qualified Professional addressing mitigation sequencing, protection of shoreline ecological functions, mitigation of overwater structures and upland shoreline modifications.
82. The applicant has submitted a Technical Memorandum that demonstrates compliance of the entire project with the CSMP and RCW 90.58.
83. The application includes a variance request from the City of Chelan Development Standards Manual Section 5C.140(2), which limits private roads to four single-family dwelling units.

84. This application requests a variance to construct three private roads, one on each of the peninsula-shaped portions of the property. The middle and western finger are proposed to each have 10 single-family dwelling units served by private roads. The eastern finger is proposed to have five single-family units and water dependent commercial space served by a private road. All other applicable road standards will be met.
85. The variance request is not to vary the bulk or dimensional standards of the Chelan Municipal Code, but to vary how the private roads are used. The Applicant's request that the three private roads each be used to access more than four single family dwelling units. All dimensional standards for the private roads will be met.
86. Use variances are not prohibited by the Chelan County Code. The criteria set forth in CMC 17.64010 must be met for either a bulk/dimensional variance or a use variance.
87. Variance must meet CMC 17.64.010 Granting – Conditions.
- 87.1 Applications for variances from the terms of the zoning ordinance, the official map ordinance, or other land use regulatory ordinances under procedures and conditions prescribed by this title or other provisions in this Chelan Municipal Code, except as provided in Section 17.64.030 relating to administrative adjustments, shall be granted only if the hearing examiner finds that all of the following conditions exist:
- 87.1.1 The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and
- 87.1.2 Such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and
- 87.1.3 That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;
- 87.1.4 Hardships of a financial nature, hardships which are self-created, and hardships which are personal to the owner and not to the property, shall not be grounds for a variance;
- 87.1.5 The proposed variance will not amount to a rezone nor authorize any use not allowed in the district.
88. As set forth below, the applicant has failed to demonstrate that all of the criteria set forth in CMC 17.64.010 are met:
- 88.1 Regarding CMC 17.64.010(A), the Applicant has failed to demonstrate that this variance would not constitute a grant of special privilege. The Applicant's stated reason for the variance is because this is a very limited size parcel that is surrounded by water. However, the Hearing Examiner finds that this is no different than a single parcel of land, of the same size, not otherwise surrounded by water, in which the Applicant proposes a cul-de-sac private road to access more than four single family dwelling units. The Hearing Examiner finds that the granting of this variance request would be a grant of special privilege to the Applicant.

- 88.2 Regarding CMC 17.64.010(B), the Applicant has failed to demonstrate that the variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, which requires the variance to provide the Applicant with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located. In fact, the Applicant is requesting a variance simply to access more single family dwelling units than is allowed by the City of Chelan Development Standards Manual, Section 5C.140(2). The fact that the Applicant wants more than four single family dwelling units to be accessed by each private road is not necessary because of any of the circumstances set forth within CMC 17.64.010(B). The Applicant simply wishes to have more than four single family dwelling units on each of the "fingers". There is nothing about each "finger" that is consistent with "special circumstances" that would either dictate that greater than four single family dwelling units must be located on each "finger" or that the private road must access more than four single family dwelling units. There is no hardship that prevents the Applicant from using this property without a variance.
- 88.3 Regarding CMC 17.64.010(C), because the entire property will be privately owned, including the proposed privately owned roads, the Applicant has demonstrated in one sense, that the variance would not be materially detrimental to public welfare. However, A variance to the City of Chelan Development Standards Manual Section 5C.140(2) may be detrimental to the public welfare because the variance request would set a precedent allowing for this development standard to be ignored in future developments. The Applicant can reasonably use this property without a variance.
- 88.4 Regarding CMC 17.64.010(D), while there is no direct evidence that the Applicant wants more than four single family dwelling units on each "finger" for financial purposes, the Hearing Examiner finds that having greater than four single family dwelling units served by a single private road in violation of the City of Chelan Development Standards Manual Section 5C.140(2) would provide a financial benefit to the Applicant. In addition, the claimed hardship, which is needing more than four single family dwelling units, is certainly self-created by the Applicant. The evidence supports that the "hardships" claimed by the Applicant are personal to the owner and not to the property. The Applicant can comply with the Chelan Municipal Code and fully develop their property as allowed by the Chelan County Municipal Code without the need for a variance.
- 88.5 Regarding CMC 17.64.010(E), the Applicant has submitted sufficient evidence to demonstrate that the proposed variance will not amount to a rezone, nor authorize any use not allowed in the District. However, the variance, as requested, would, after the use of the private road (to access four single family dwelling units).
89. After the administrator determines an application for a subdivision is complete, it shall be reviewed according to the process for a Type IVA project permit, under the development regulations, and shall be approved upon a determination it satisfies the requirements of the land division code.
90. The Hearing Examiner has jurisdiction to render a final decision on a Preliminary Plat application (Type IVA application) according to Title 19.
91. Land divisions may be approved only upon the following considerations and supported by appropriate findings and conclusions that the following are satisfied:

- 91.1 The public use and interest will be served by the approval of the proposed land division, and associated dedications and impact fees, if any.
 - 91.2 Appropriate provisions are made for, but not limited to, conditions due to flooding, bad drainage, topography, critical areas, rock formations, or other physical characteristics of the land and other matters affecting the public health, safety and general welfare; for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.
 - 91.3 Any land division for land situated in a flood control zone shall satisfy the requirements of Title 14, Environmental Regulations, and must have written approval from the Department of Ecology as provided in Chapter 86.16 RCW.
 - 91.4 No locally-adopted level of service standard for public facilities and services will fall below the standards as set forth in the Comprehensive Plan as a result of the land division being approved.
 - 91.5 The public facilities and services necessary to support the land division shall be adequate and available concurrently with the demand for such services.
 - 91.6 The capacities and dimensions of water, sewerage, drainage and street facilities shall be adequate to provide for future needs of other undeveloped properties in the general vicinity, with the subdivider bearing a roughly proportionate portion of the cost that is the result of the relative impact of the land division, and the balance to be borne in a manner appropriate for the situation, either through a latecomer's agreement, development agreement, or by contribution by the city.
 - 91.7 No dedication, impact fee, condition or requirement shall be imposed upon the approval of a land division that constitutes an unconstitutional taking of private property.
92. The evidence supports a finding that all of the criteria set forth in Conditional of Approval No. 90, have been met.
93. CMC 17.40.040 identifies the following dimensional standards applicable to lots within the Commercial Waterfront Zoning District:
- 93.1 **17.40.040 Dimensional standards.** Dimensional standards are as follows:
 - 93.1.1 Minimum lot area: five thousand square feet;
 - 93.1.2 Minimum width of lot at building line: fifty feet;
 - 93.1.3 Minimum lot depth: one hundred feet;
 - 93.1.4 Maximum lot coverage: sixty-five percent;
 - 93.1.5 Maximum height of buildings: twenty-five feet; provided, that an applicant may seek a maximum height of thirty-five feet consistent with Section 17.04.200;
 - 93.1.6 Minimum setback distances:
 - 93.1.7 Front yard: twenty-five feet;
 - 93.1.8 Rear yard: zero feet;
 - 93.1.9 Side yard: five feet;

93.1.1.10 Buildings on corner lots shall observe the minimum front yard setback on both streets and shall provide at least one rear yard setback.

94. The Applicant can redesign the lots to comply with these requirements.
95. CSMP Table 3-2 requires a 50-foot wide shoreline frontage for residential lots in the High Intensity Environment.
96. The lot widths can comply with this requirement.
97. Access to the lots is proposed from West Woodin Avenue (SR 97A) via three, 50-foot-wide access and utility easements.
98. The private roads will have a 24-foot wide paved surface with a 5-foot wide sidewalk.
99. Tract A is proposed within vacated Boulevard Avenue. The area will be improved for public access with trails, landscaping, parking and viewing platforms. A Maintenance Agreement has been submitted identifying the Chelan Bay Homeowners Association as primarily responsible for maintenance of Tract A.
100. A draft Declaration of Covenants, Conditions and Restrictions and Restrictions of Chelan Bay Homeowners Association has been submitted with the application which includes requirements for maintenance of common areas including roads.
101. ADJACENT LAND USES:
North: Lake Chelan
South: W. Woodin Ave/SR 97A
East: Lake Chelan/Residential/Commercial
West: Lake Chelan
102. ADJACENT ZONING DISTRICTS:
North: Lake Chelan
South: W. Woodin Ave/SR 97A; Tourist Accommodation (T-A)
East: Lake Chelan
West: Commercial Waterfront (CW)
103. Utility / Services available within the project area are provided by:
 - 103.1 Water / Sewer – City of Chelan
 - 103.2 Fire Protection Service – Chelan County Fire Protection District Number 7
 - 103.3 Law enforcement – Chelan County Sheriff
 - 103.4 Power / Electric – Chelan County PUD
 - 103.5 Public Transit – Link
104. Comprehensive Plan goals and policies support the proposal as follows:
 - 104.1 Natural Systems Critical Areas
 - 104.1.1 GOAL 1: PROTECT WATER QUALITY
 - 104.1.2 Goal Rationale: Protecting water quality in the area has important implications for public health and the local economy. Lake Chelan, the Columbia River and underground aquifers are the source of domestic and irrigation water in the area

and are susceptible to contamination from many sources. Maintaining the high-water quality and clarity is also important to the tourism economy as these factors contribute greatly to the recreational attraction of the area.

104.1.3 Policy 2: Ensure that storm water is not directly discharged into water sources without appropriate treatment that meets federal, state, and city standards.

104.1.4 Rationale: Storm water can carry many pollutants such as fecal coliform bacteria, gas and oil. Appropriate treatment may include oil/gas separators, dry wells and the use of natural systems such as wetlands.

104.1.5 Policy 4: Development along the shoreline shall comply with federal, state, and City guidelines to ensure minimum impact on water quality.

104.1.6 Rationale: There is a direct relationship between water quality and shoreline development. Shorelines with high water quality and clarity are desirable locations for development. Development in turn must provide appropriate safeguards to continue these favorable conditions.

104.2 Commercial

104.2.1 GOAL 1: SUPPORT AND ENCOURAGE COMMERCIAL DEVELOPMENT WITHIN THE URBAN GROWTH AREA

104.2.2 Goal Rationale: Commercial activities generally require support of adequate infrastructure; therefore, commercial activities should occur within the urban growth area that has the services to provide for commercial enterprises.

104.2.3 Policy 2: Urban areas should plan and regulate development to provide for adequate parking facilities either on site or through shared parking facilities.

104.2.4 Rationale: Adequate parking is essential for commercial viability.

104.2.5 Policy 23: New development should adequately address parking, traffic and circulation, and landscaping requirements. Excessive automobile and truck traffic should not be directed through residential areas.

104.2.6 Rationale: Commercial development must be compatible with the present pattern and further needs of the circulation system. Access needs of pedestrians, bicycles, cars and trucks must be met and adequate parking should be provided.

104.3 Economic Development Element

104.3.1 Goal 8 Protect the quality of the air and water in the Chelan Valley

104.3.2 Rationale Clean air and high-water quality are essential to the quality of life and an important factor in decisions that make the Chelan Valley a popular destination. These important environmental factors should not be compromised as a result of growth.

104.3.3 Policy 8.2 Create and adopt incentives that encourage new development to take advantage of the site's terrain and natural features with minimal disturbance.

105. The Hearing Examiner has jurisdiction to render a final decision on a Shoreline Substantial Development permit (Type III application), Preliminary Plat (Type IVA) and a Development Code Variance (Type III) according to Title 19.

106. Public notice was provided for in accordance with the applicable ordinance requirement of Title 19 of the City of Chelan Municipal Code. The notice of application was posted and mailed on October 2, 2019 and published on October 2, 2019. The notice of public hearing was posted and mailed on September 22, 2020 and published on September 23, 2020.

107. The application was referred to the Public Works Department, City Building Department, City Administration, City Mayor, Chelan County Fire District #7, Washington Department of Transportation, Chelan County PUD, U.S. Army Corps of Engineers, WA State Dept. of Ecology, WA State Dept. of Fish and Wildlife, WA State Dept. of Natural Resources and Colville Confederated Tribes.
108. The Department of Ecology provided written comments dated October 30, 2019.
109. The Law Office of Breskin, Johnson & Townsend, PLLC provided written comments on behalf of Chelan Basin Conservancy dated October 31, 2019.
110. John Olson provided written comments dated October 31, 2019.
111. The Green family provided written comments dated November 1, 2019.
112. Chelan County PUD provided written comments dated November 13, 2019.
113. City Administration, City Mayor, Chelan County Fire District #7, U.S. Army Corps of Engineers, WA State Department of Fish and Wildlife, WA State Department of Natural Resources, and the Colville Confederated Tribes did not provide comments.
114. The Applicant provided a response to the comments dated November 13, 2019.
115. No other agency or public comments were received
116. The Hearing Examiner has jurisdiction to decide the variance request according to CMC17.64.010.
117. After due legal notice an open record public hearing, by means of Zoom telephone conference, was held on October 6, 2020.
118. Because of the current Covid-19 situation, the public and applicant were allowed to appear at this hearing by telephone conference.
119. The following exhibits were admitted into the record:
 - 119.1 Exhibit 1: Staff Report
 - 119.2 Exhibit 2: Preliminary Plat Application
 - 119.3 Exhibit 3: Preliminary Plat Map
 - 119.4 Exhibit 4: Preliminary engineering
 - 119.5 Exhibit 5: Traffic Impact Analysis
 - 119.6 Exhibit 6: Updated Traffic Study
 - 119.7 Exhibit 7: JARPA
 - 119.8 Exhibit 8: SEPA Checklist
 - 119.9 Exhibit 9: DNS with conditions
 - 119.10 Exhibit 11: Development Regulation Variance
 - 119.11 Exhibit 12: Critical Area Checklist
 - 119.12 Exhibit 13: Mitigation Plan
 - 119.13 Exhibit 14: SMP Compliance Memorandum
 - 119.14 Exhibit 15: Vegetation Survey

- 119.15 Exhibit 16: Chelan Bay – Concept Plan (public access) dated September 13, 2019
 - 119.16 Exhibit 17: Public Lookout Options A & B dated December 4, 2019
 - 119.17 Exhibit 18: Public Notices
 - 119.18 Exhibit 19: Public Comments
 - 119.19 Exhibit 20: Agency Comments
 - 119.20 Exhibit 21: Complete Application Letter
 - 119.21 Exhibit 22: Joint Use Dock Agreement Template
 - 119.22 Exhibit 23: Draft BLVD Avenue Public Easement Maintenance Agreement
 - 119.23 Exhibit 24: Draft Chelan Bay CCR's
 - 119.24 Exhibit 25: Draft Private Road Agreement
 - 119.25 Exhibit 26: Trippen Deed
120. Appearing and testifying was Ryan Walker. Mr. Walker testified that he is the agent of the property owner and Applicant. Mr. Walker testified that by locating the private roads in the middle of each “finger” it eliminated the need for a shoreline variance regarding shoreline setbacks. He testified that the private roads within the easement area would be the same size as a right of way for public roads. He testified that the proposed multiple residential joint use docks and a commercial dock are consistent with the City of Chelan Shoreline Master Program. Mr. Walker testified that the road dimensions would be same whether the access was for four single family dwelling units or ten single family dwelling units.
121. Appearing from the public were the following people:
- 121.1 Chris Stansfield. Mr. Stansfield testified regarding potential water problems, including water pressure issues. The City of Chelan City Engineer Tom Tupling, responded that there would be no degrading of water pressure for neighboring properties and, in fact, the water improvements may actually improve water pressure for neighboring properties.
 - 121.2 Kevin Bromiley. Kevin Bromiley is an attorney for the Applicant and testified regarding Use versus Bulk variances. He argued that the nature of the property as a peninsula is the hardship claimed by the Applicant.
 - 121.3 Chris Martin. Mr. Martin testified that he was an agent authorized to appear and speak on behalf of the property owner. Mr. Martin testified that they are trying to get more density with single family dwelling units, but less than they could obtain with multi-family housing.
122. After the Hearing Examiner closed the record, the Applicant made a request to reopen the record to submit a memorandum regarding Bulk vs. Use variances. The Hearing Examiner granted this request to reopen the hearing by order dated October 8, 2020. In this Order, the Hearing Examiner admitted into the record that document submitted by the Applicant and provided timeframes for rebuttal written materials by the public, and reply written materials from the Applicant.
123. The only rebuttal documentation submitted by the public was a letter from Bruce Powers.
124. The Applicant did not submit any reply materials.
125. The public record closed on October 22, 2020.
126. The Hearing Examiner has reviewed the applications, the submitted materials and the evidence admitted at the hearing. Based on the information contained in the applications and compliance

with the Revised Code of Washington, the Washington Administrative Code, the City of Chelan Comprehensive Plan, and the Chelan County Code, the Hearing Examiner makes this decision and provides the Conditions of Approval.

127. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction to render a final decision on a shoreline substantial development permit (Type III application) according to CMC Title 19, Administration of Development Regulations and CMC Title 2, Chapter 2.15 – Hearing Examiner.
2. As conditioned the proposal is consistent with the policies of RCW 90.58.020.
3. As conditioned the proposal does not interfere with the normal public use of public shorelines.
4. As conditioned the proposal is compatible with other allowed uses within the area.
5. The proposal will cause no unreasonably adverse effects to the High Intensity shoreline environment.
6. As conditioned, the public interest will suffer no substantial detrimental effect by the Subdivision and Shoreline Substantial Development Permit.
7. As conditioned the public use and interest will be served by the approval of the proposed land division, and associated dedications.
8. As conditioned, appropriate provisions are either unnecessary or are made for conditions due to flooding, bad drainage, topography, critical areas, rock formations, or other physical characteristics of the land and other matters affecting the public health, safety and general welfare; for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.
9. As conditioned the proposed project will not cause level of service standard for public facilities and services will fall below the standards as set forth in the Comprehensive Plan.
10. The public facilities and services necessary to support the land division shall be adequate and available concurrently with the demand for such services.
11. As conditioned, the public facilities and services necessary to support the proposed project are adequate and will be available concurrently with the demand for such services.
12. As conditioned, capacities and dimensions of water, sewage, drainage and street facilities are adequate to provide for future needs of other undeveloped properties in the general vicinity.
13. Legal notice was provided in compliance with CMC Title 19 and Shoreline Master Program.

14. Because the project is located within 200' of the ordinary high-water mark and, according to the City of Chelan Shoreline Master Program, a shoreline substantial development permit will be required.
15. The site is located within the High Intensity Shoreline Environment Designation.
16. The subject property is located within the Waterfront Commercial (C-W) zoning district and comprehensive plan designations.
17. As conditioned, the proposal substantially complies with the City of Chelan Comprehensive Plan, Zoning Code, Land Division Code, Development Standards RCW 58.17 and Shoreline Master Program.
18. The Chelan Municipal Code does not prohibit a use variance.
19. The variance request is inconsistent with the criteria set forth in CMC 17.64.030.
20. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

DECISION

SDP 2019-10 and SUB 2019-16 are hereby **APPROVED** and VAR 2019-06 is hereby **DENIED**.

Dated this 30th day of October, 2020.

CITY OF CHELAN HEARING EXAMINER

Andrew L. Kottkamp

This Shoreline Substantial Development Permit is granted pursuant to the Shoreline Master Program of the City of Chelan, 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).

These permits 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 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. Said periods may be extended for a single period of not more than one (1) year, on reasonable bases, provided that application is made to the City prior to the expiration of said period(s). The running of the periods shall not include the time incurred obtaining other permits necessary for the completion of the project.

Anyone aggrieved by the decision on SSDP 2019-10, has twenty-one (21) days from the “date of receipt” as defined in RCW 43.21B.001 to file a petition for review with the Shorelines Hearing Board as provided for in Washington law.

Anyone aggrieved by the decision on SEPA 2019-16, VAR 2019-06, and SUB 2019-16 has twenty-one (21) days from the issuance of this decision, to file an appeal with Chelan County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.

**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:
