



## DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

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# STAFF REPORT AND RECOMMENDATION

### LAPINSKI DOCK, BULKHEAD REPAIR AND POCKET BEACH CONSTRUCTION

FILE #: PLN51157 SSDP

Prepared by David Greetham, Senior Planner

August 5, 2019

**Request:** Shoreline Substantial Development Permit (SSDP)

**Owner:** John and Anjali Lapinski

**Location:** 6150 NE Eagle Harbor Drive, Bainbridge Island

**Tax Parcel:** 342502-1-008-2005

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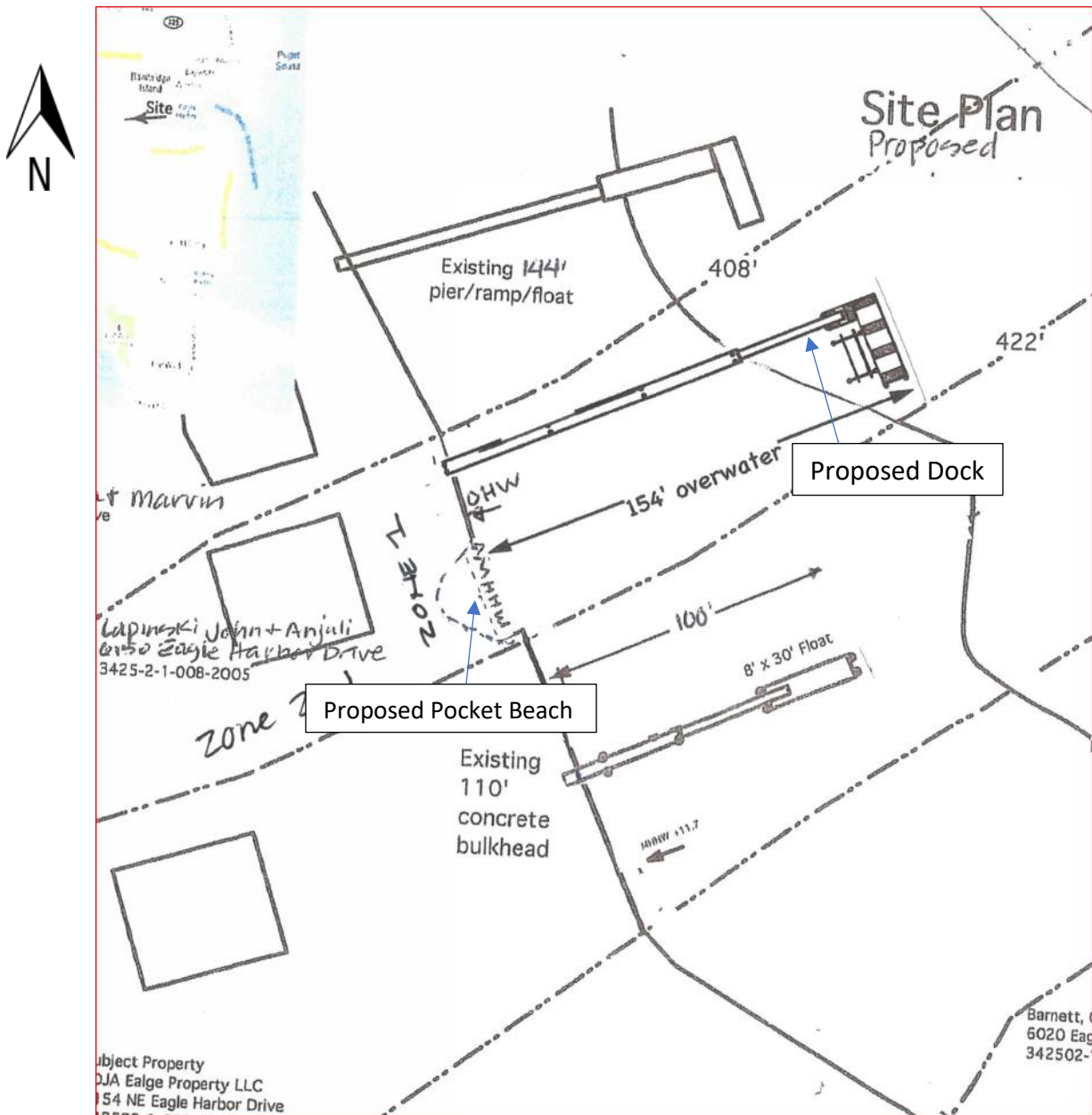
#### Part I: Description of Proposal and Recommendation

1. **Description of Proposal:** Construct a new 144-foot (overwater) pier, ramp, float and boat lift. Replace 50% of the existing 80-foot concrete bulkhead with a soldier pile and concrete slab bulkhead and create a new pocket beach on the remaining shoreline frontage to mitigate shoreline impacts.

An upland boathouse was reviewed and approved under a prior Shoreline Substantial Development Permit Exemption.

2. **Environmental Review:** A mitigated determination of non-significance (MDNS) was issued on May 10, 2019. No SEPA appeals were received.
3. **Staff Recommendation:** Staff recommends approval of the SSDP with conditions.

Figure 1 – Site Plan



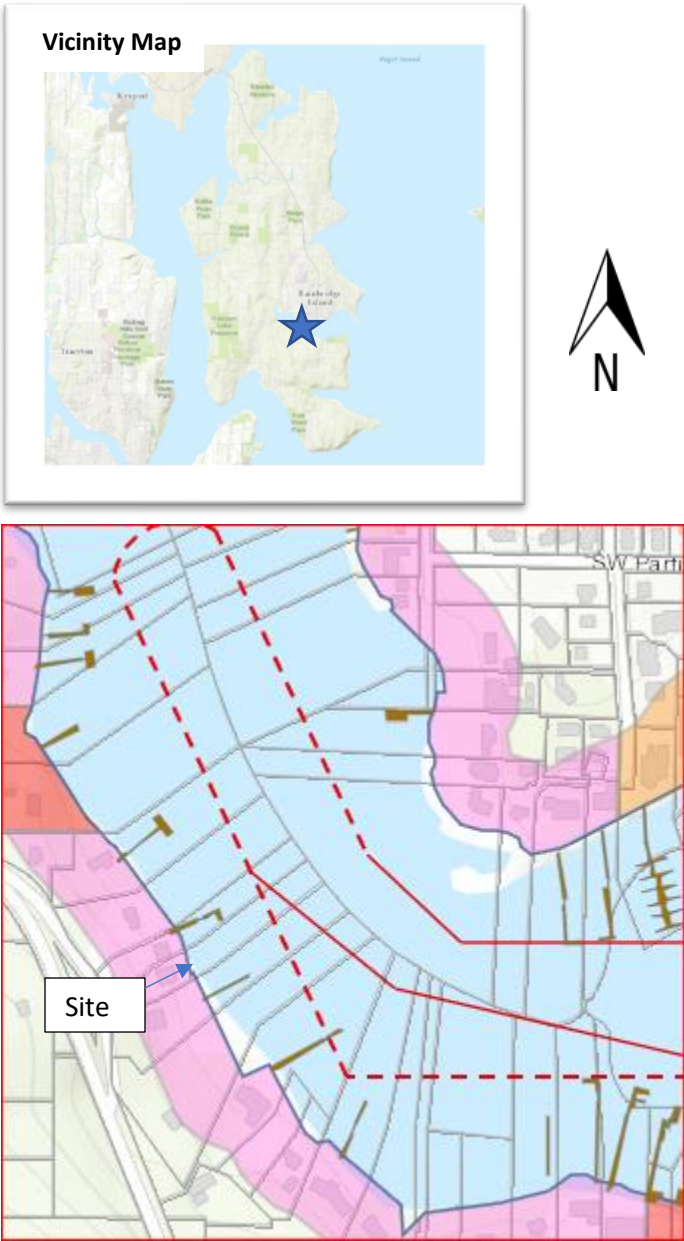
## Part II: General Information and Site Characteristics

Basic Information	
Zoning District	R-2 (Residential, two units per acre)
Shoreline Designation	Shoreline Residential
Existing Development	Single family residence and concrete bulkhead
Critical Areas	Flood hazard mapped area in low-lying area adjacent to bulkhead
Surrounding shoreline uses	The subject site is on the southwest shore of Eagle Harbor in an area where the harbor narrows and turns to the northwest. There are approximately 15

	residential docks on in this (narrower) segment of the Harbor. Recreational uses include both motorized boats and an active rowing community (see public comments, below). In recognition of the necessity to protect navigational rights within this narrower segment of the Harbor, City resource maps include an Eagle Harbor and US Army Corps of Engineers (USACE) Construction Limit Lines (see solid and dashed red lines in figure at bottom of page).
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Public Services and Utilities	
Police	City of Bainbridge Island Police Department
Fire	Bainbridge Island Fire Department

**Figure 2 – Vicinity Map, Project Site, and Surrounding Zoning**





### Part III: Application Background

Date	Action	Summary
May 29, 2018	Preapplication Meeting	Meeting with staff to discuss permit process.
June 1, 2018	Preapplication Letter Sent	Summary of permit process/requirements.
August 15, 2018	Application Submitted	Submitted on the effective date of Ordinance No. 2018-05 as an allowed exception.
September 12, 2018	Determination of Completeness	Application deemed complete.

### Part IV: Comprehensive Plan Goals and Policies

Background and Findings
The policies of the Shoreline Master Program (SMP) are a component of the City's Comprehensive Plan and guide the interpretation and enforcement of the SMP's regulations. Staff finds the proposal, as modified through conditions of approval, to be consistent with the goals and policies of the SMP. See code analysis below.

## Part V: Public Notice, Public Comments, and Agency Comments

### 1. Public Notice

Date	Action	Summary
October 12, 2018	Notice of Application/SEPA Comment Period/Hearing Published	30-Day Comment Period Five comments received during 30-day comment period; two additional comments received from neighbors following 30-day comment period.
May 10, 2019	SEPA Mitigated Determination of Non-Significance (MDNS) issued	14-Day Appeal Period. No SEPA appeals received.

### 2. Public Comments

Summary of Comment	City Response
<p><b>Reject requests for variance and mooring buoy:</b> Three comments were received recommending that the dock length be limited to that specified in the Shoreline Master Program (SMP), and that variance and mooring buoy be denied. Key comments included:</p> <ul style="list-style-type: none"> <li>• Would exceed length of neighboring docks</li> <li>• Would extend into navigable waters of Eagle Harbor where harbor narrows, currently utilized by public for rowing, kayaking and canoeing.</li> <li>• Would create unsafe navigation hazard</li> <li>• Would destroy salmon habitat</li> <li>• Buoy should be denied due to hazard to navigation in constricted areas of public waters.</li> </ul>	<p>In response to public comments received during the notice of application/SEPA comment period, the applicant agreed to a SEPA mitigation measure prohibiting mooring buoy installation if the variance request for additional dock length is approved.</p> <p>The applicant subsequently agreed to a project condition limiting the proposed dock length to that of the adjoining dock (144'), therefore eliminating the request for a shoreline variance altogether.</p>
<p><b>Minimize forage fish impacts:</b> A comment letter was received from the Suquamish Tribe inquiring if the area contains forage fish spawning what measures have been taken to minimize impacts, e.g.:</p> <ul style="list-style-type: none"> <li>• Single piling design</li> <li>• Dock height.</li> </ul>	<p>No forage fish spawning is mapped at the subject location. The nearest mapped forage fish habitat is approximately 1,700 feet to the southeast (sand lance and smelt). The dock requires approval from the US Army Corps of Engineers and Washington Department of Fish and Wildlife, including permit requirements established to minimize habitat impacts.</p>
<p><b>Concerns from adjacent neighbor to north (Radloff):</b></p> <ul style="list-style-type: none"> <li>• Location of boat house would impact views.</li> <li>• Can separation between docks be increased?</li> <li>• Willing to work with applicant and other neighbors to coordinate relocation of existing and proposed mooring buoys for better alignment with properties and improving rowing lanes within harbor.</li> </ul>	<p>In response to the stated concerns, the applicant communicated with the commenting party and subsequently redesigned the boat house to minimize view impacts. The Radloffs subsequently submitted a second comment generally supporting the proposal (see below).</p>
<p><b>Support from neighbors:</b> Following the initial public 30-day comment period, the applicant communicated with the neighboring</p>	<p>Comments acknowledged. The adjacent landowners to the north and south have expressed general support for the proposal.</p>

<p>landowners (Radloff and Azore) to determine support for the proposal. Both neighbors subsequently submitted comments generally expressing support for the proposal. Reasons provided include:</p> <ul style="list-style-type: none"> <li>• Radloff: The primary concern expressed in the original comment letter was the impact of boat house placement on shoreline views to the south/southeast. The applicant's architect subsequently redesigned the boat house to minimize views, resulting in a second comment letter from Radloffs stating no further objection to the proposal.</li> <li>• Azore: The Azores own the adjacent lot to the south/southeast of the Lapinskis. Comments were provided explaining that while they were originally permitted for a 140-foot dock (which the Lapinskis could have extended to without a variance), they chose to build to 100 feet due to the shallow slope of the tidelands and limited value of installing the dock at the permitted length of 140 feet. The comment letter expresses regret that their dock has limited use, and "...agree that the opportunity to have a deeper water dock would be an extreme benefit."</li> </ul>	
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## Part VI: Code Analysis

### 1. BIMC Chapter 16.12 – Shoreline Master Program (SMP)

#### a. BIMC 16.12 SMP General

Shoreline Characteristics	
Shoreline Designation	Shoreline Residential
Aquatic Designation	Aquatic
Geomorphic Class	Spit/barrier/backshore
Geomorphic Shoretype	No Appreciable Drift
Shoreline Buffer	75 feet landward of Ordinary High Water Mark (OHWM)
Zone 1	30 feet
Zone 2	Remainder of shoreline buffer (45 feet)
No Net Loss Demonstration	Site Specific Impact Analysis and Mitigation Plan, Ecological Land Services, August 3, 2018. Includes assessment of baseline environmental conditions, assessment of priority habitat, impact assessment, analysis of mitigation sequencing.
Shoreline Use	Residential docks and bulkhead repairs are permitted in Shoreline Residential.

#### b. BIMC 16.12.030.B Environmental Quality and Conservation

No Net Loss of Ecological Function and Processes Demonstration
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Baseline Site Conditions	The 0.29-acre lot is located on the south side of west Eagle Harbor. The lot is currently developed with a concrete access drive, existing home and deck, and a concrete bulkhead at the shoreline edge. The existing shoreline buffer consists of grass lawn, and the beach is unvegetated.
No Net Loss Demonstration	See Site Specific Analysis and Mitigation Plan prepared by Ecological Land Services (August 2018). The plan analyzes impacts related to the planned bulkhead repair and pocket beach mitigation, and also provides a “no adverse effect” determination for federally listed species for proposed activities within the mapped FEMA flood hazard area.  The dock design will achieve no net loss via compliance with City, State and Federal permitting standards for dock design to minimize habitat impacts (e.g. pier, ramp and float dimensions and materials, piling installation, and bulkhead repair method).
Mitigation Sequencing	<b>Avoid:</b> The location of the boathouse (permitted via a prior Shoreline Substantial Development Permit Exemption) was designed to avoid direct impacts to the shoreline. The bulkhead, dock and buoy occur at or below ordinary high water and cannot avoid direct impacts. <b>Minimize:</b> The replacement bulkhead will be 50% of the total length of the current bulkhead and will utilize materials to avoid leaching of chemicals into the shoreline environment. The proposed dock (and buoy if installed) will comply with Federal, State and City dock construction standards to minimize overwater impacts. <b>Rectify:</b> The proposal includes construction of a new pocket beach in order to restore half of the current bulkhead length to a more natural shoreline edge. <b>Reduce:</b> The project cannot reduce or eliminate impacts via preservation and maintenance. <b>Compensate:</b> Compensation for the replacement bulkhead will be occur via installation of the pocket beach to an area that was historically armored, improving the function of the shoreline buffer and mitigating for partial bulkhead replacement impacts.

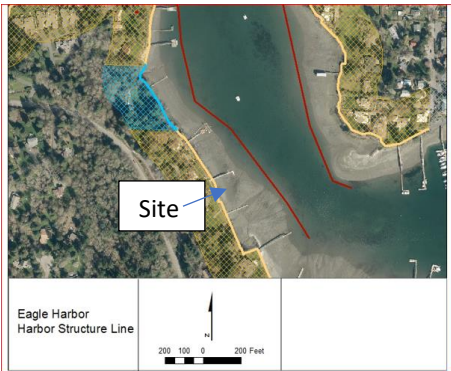
c. BIMC 16.12.030.B.6 Floodplain Hazard Management

Critical Area	Required	Proposed
FEMA flood hazard Area at shoreline edge	Floodplain Habitat Effects Determination	“No adverse effect” determination provided for activities at or above the OHWM (ELS, August 3, 2018). The project is conditioned to demonstrate FEMA habitat compliance for the proposed dock via documentation of US Army Corps of Engineers approval with the building permit application for the dock.

d. BIMC 16.12.050 (B) Shoreline Stabilization and (C) Overwater Structures - Regulations

Shoreline Stabilization and Overwater Structures	Required/Allowed	Proposed
Shoreline Stabilization	Soft-treatment stabilization shall be	Compliant with standard. The existing

(B.4.a)	utilized to the maximum extent feasible.	concrete bulkhead is damaged. The proposal includes partial (50%) replacement with a pile bulkhead and installing a soft-treatment pocket beach on the remaining shoreline frontage in place of the existing bulkhead. (See Site Specific Analysis and Mitigation Plan, ELS, August 2018)
Repair of Existing Shoreline Stabilization (B.7.b)	Damaged structural stabilization may be repaired up to 50% of the linear length within a five-year period. Repair that exceeds 50% shall be considered replacement.	Compliant with standard. The proposed repair does not exceed 50% of the linear length of the existing bulkhead and is therefore a repair rather than replacement. There have been no prior repair applications within the previous five-year period.
Piers and docks (C.3.c)	Shall be designed to minimize interference with the use of navigable waters and may be limited in length where necessary to protect navigation and public use.	Compliant with standard. Revisions to the design are proposed to minimize interference with navigable waters. The originally proposed 154-foot total overwater length is revised to match the maximum 144-foot length of the adjoining dock (condition no. 19).
Piers and docks (C.3.i)	New docks and piers shall be allowed only for water-dependent uses. A dock associated with a single-family residence is a water-dependent use and may be permitted; provided it is designed and intended as a facility for access to watercraft and otherwise complies with the provisions of the Act and the SMP.	Compliant with standard. The proposed dock is associated with a single-family residence and is designed and intended as a water-dependent facility for access to watercraft.
Piers and docks (C.4.a)	A single-use dock consists of a pier, ramp, float and one boat lift.	Compliant with standard. The proposed single-use dock includes a pier, ramp, float and one boat lift.
Pilings (C.5.a)	Steel, concrete, plastic or untreated wood material; minimum 20-foot spacing; two moorage pilings per boat; no biocides; minimum vertical clearance of 18" above extreme high water.	Compliant with standard, per application materials.
Pier (C.5.b)	Maximum four-foot width; minimum 30% functional grating; full grating for sections that span upper intertidal areas with obligate vegetation.	Compliant with standard, per application materials.
Float (C.5.c)	Maximum eight-foot width and 30-	Compliant with standard, per

	foot length; minimum 50% functional grating; north-south orientation to maximum extent practicable.	application materials.
Float stops (C.5.d)	Multiple standards as listed.	Compliant with standards, per application materials.
Residential Piers and Docks – size (C.5.g)	<p>The maximum length shall not extend beyond the length of adjacent docks within 500 feet or the distance necessary to obtain a depth of nine feet of water as measured at MLLW at the landward limit of the moorage slip, whichever is closer to shore. A dock shall not extend beyond the adjoining property dock or the line of navigation (see inset below) and in no case shall piers and their associated ramps and floats extend greater than 15% of the perpendicular shore-to-shore distance except where a navigational study has been provided. Piers, docks and floats must be set back a minimum of 10 feet from side property lines.</p> 	<p>As conditioned, the dock length is compliant with all standards for maximum dock length:</p> <ul style="list-style-type: none"> <li>• The average length of the five existing docks within 500' of the project site is 151.8'.</li> <li>• The adjoining dock immediately to the north/northwest is 144' in length. The proposal is conditioned to not exceed 144' in length (condition no. 19).</li> <li>• The proposed dock does not extend beyond the Eagle Harbor Structure Limit Line (red-line on inset to left) and the USACE Construction Limit and Suggested Construction Limit Lines, and does not exceed 15% of the shore-to-shore distance at mean lower low water (MLLW).</li> <li>• The proposed dock is proposed to be set back a minimum of 10 feet from side property lines.</li> </ul>
Mooring buoys (C.5.h-i)	Multiple standards	NA. Pursuant to SEPA mitigation measures, the applicant has agreed to eliminate the buoy from the proposal.

## Part VII: Decision Criteria

### 1. BIMC 2.16.165.F Shoreline Substantial Development Permit

In making the decision, the administrator shall grant a substantial development permit only when the development proposed is consistent with the following:

Decision Criteria	Findings
1. The applicable policies, guidelines, and regulations of the Shoreline Management Act of 1971; Chapter 90.58 RCW, as amended; and Chapters 173-26 and 173-27 WAC or their successors;	As conditioned and demonstrated by the above analysis, the proposed development is consistent with the Shoreline Management Act (SMA) and all revisions thereafter.
2. The goals, policies, objectives and regulations of the city of Bainbridge Island shoreline master program;	As conditioned and demonstrated by the above analysis, the proposed development is consistent with goals, policies, objectives and regulations of the SMP, including the no net loss standard. The proposal includes an overall 50% reduction in bulkhead length and installation of a pocket beach for habitat mitigation.
3. The city of Bainbridge Island Comprehensive Plan and municipal code; all other applicable laws; and any related documents and approvals.	The Shoreline Goals and Policies at BIMC Chapter 16.12 are part of the City's Comprehensive Plan. The proposed development is consistent with the Bainbridge Island Comprehensive Plan and the BIMC.
The administrator shall also consider whether the cumulative impact of additional past and future requests that reasonably may be made in accordance with the comprehensive plan, or similar planning document, for like actions in the area will result in substantial adverse effects on the shoreline environment and shoreline resources.	The underlying proposal consists of permitted uses, including repair of an existing shoreline bulkhead and installation of a dock associated with a single-family residence for a water-dependent use. Future proposals for like actions (e.g. permitted uses) in the area would likely not result in substantial adverse effects as they would be subject to all applicable SMP standards, including the requirement to demonstrate no net loss to shoreline ecological functions.

#### Part VIII: Attachments

1. PLN51157 SSDP SVAR Application
2. PLN51157 SSDP SVAR Site Plans
3. PLN51157 SSDP SEPA Checklist
4. PLN51157 SSDP Site Specific Analysis and Mitigation Plan
5. PLN51157 SSDP Affidavit of Notices
6. PLN51157 SSDP Habitat Survey
7. PLN51157 SSDP Applicant Response to Shoreline Variance Decision Criteria
8. PLN51157 SSDP Engineering Report for Bulkhead Replacement
9. PLN51157 SSDP Notice of Application
10. PLN51157 SSDP SEPA Determination

#### Part IX: Recommendation and Conditions of Approval

Staff is recommending approval of the Shoreline Substantial Development Permit (SSDP) in accordance with the conditions below.

**SEPA Conditions:**

1. Buoy installation shall be prohibited unless the dock size is reduced to a length not requiring a variance (144' or less). In such case, a buoy may be applied for in accordance with Shoreline Master Program standards. (Basis: BIMC 16.12.050.C.3.b)
2. All in-water and over-water installation and construction activities shall adhere to authorized work windows established by the Washington Department of Fish and Wildlife provisions found in WAC 220-660-330 and specified in the conditions of the HPA issued for the project.
3. Construction material shall be towed to the site with a towboat and a barge at high tide. Pile drivers shall use constructed work platforms (e.g. the barge). If deemed infeasible, documentation proving the infeasibility and alternative method shall be submitted and approved by the City prior to using alternative pile installation methods.
4. The vibratory method of pile installation shall be used for all piles, unless proven infeasible. If deemed infeasible, documentation proving the infeasibility and alternative method shall be submitted and approved by the City prior to using alternative pile installation methods.
5. Equipment shall operate in a manner that minimizes the suspension of particulates. All equipment used in or around waters shall be clean and inspected daily before use to ensure that the equipment has no fluid leaks. Should a leak develop during use, the leaking equipment will be removed from the site immediately and not used again until it has been adequately repaired. Equipment should be stored and/or fueled at least 100 feet from any surface water where possible.
6. Flotation for the float shall be fully enclosed and contained in a shell (e.g. polystyrene tubs not shrink wrapped or sprayed coatings) that prevents breakup or loss of the flotation material into the water and is not readily subject to damage by ultraviolet radiation and/or abrasion caused by rubbing against piling and/or waterborne debris.
7. The float stop collars shall be installed to keep the floats a minimum of one foot above the tidelands.
8. When plastics or other non-biodegradable materials are used in float, pier, or dock construction, precautions shall be taken to ensure their containment.
9. New piling shall be steel. Any piling subject to abrasion (and subsequent deposition of material into the water) must incorporate design features to minimize contact between all the different components of overwater structures during all tidal elevations.
10. Use of arsenate compounds or creosote-treated members is prohibited. Piles, floats, or other components in direct contact with water shall not be treated or coated with biocides such as paint or pentachlorophenol.
11. Extreme care shall be taken to prevent petroleum products, chemicals, or other toxic or deleterious materials from entering the water and degrading water quality. If a spill does occur, or if oil sheen or any distressed or dying fish are observed in the project vicinity, work shall immediately cease, and Washington Department of Ecology shall be notified of such conditions. Contact: Northwest Regional Spill Response Section at (206) 649-7000.
12. To avoid degradation of existing water quality, no over-water application of paint, preservative treatment, or other chemical compounds shall be permitted at any time.

13. Any treated wood lumber to be used for the project shall meet or exceed the standards established in "Best Management Practices for the Use of Treated Wood in Aquatic Environments" developed by the Western Wood Preservers Institute, revised July 1996. All ACZA (e.g. Chemonite) treated wood pilings and lumber shall be treated by the manufacturer per the Post Treatment Procedures outlined in "BMP Amendment #1 – Amendment to the Best Management Practices for the Use of Treated Wood in Aquatic Environments: USA Version- Revised July 1996", by the Western Wood Preservers Institute or current revision.
14. Prior to construction, the applicant shall provide the City with evidence that all the treated wood lumber to be used in the dock construction was properly treated in accordance with condition #13, above.
15. All foreign material removed from the site shall be permanently disposed of in an upland location so as not to be re-introduced in waters of the state.
16. The applicant shall notify City staff within 48 hours of project completion to allow for field inspection and document compliance with the conditions of approval.
17. If any historical or archaeological artifacts are uncovered during excavation or construction, work shall immediately stop, and the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation shall be immediately notified. Construction shall only continue thereafter in compliance with the applicable provisions of law.

**Project Conditions:**

17. Work within shoreline jurisdiction shall be completed in substantial compliance with the August 2018 *Site Specific Analysis and Mitigation Plan* prepared by Ecological Land Services, except to comply with these conditions.
18. Work shall be completed in substantial compliance with the design and specifications included in the attachments, except to comply with these conditions.
19. The total dock length shall not exceed that of the adjoining dock to the north (144').
20. The dock shall be a minimum of 10' from the nearest side property line.
21. A building permit shall be obtained from the Department of Planning and Community Development prior to commencing construction. The permit application shall include a revised site plan depicting the maximum 144' dock length in accordance with condition no. 19.
22. The applicant shall notify the City in writing at least 48 hours before work is to begin and the duration of the work period.
23. Construction pursuant to this permit shall not begin and is not authorized until 21 days from the date of filing with the Department of Ecology as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).
24. The applicant shall notify the City when the project is complete and allow for post-project field inspection of the project.
25. Any use, construction, placement, removal, alteration, or demolition of any structure, land, vegetation or property in a manner that violates the terms or conditions of this permit shall be

considered a violation of the Bainbridge Island Shoreline Master Program and be subject to the applicable violations, enforcement and penalties provisions of the Program.

26. Activities to be undertaken as part of this permit require approvals or permits from the Washington Department of Fish and Wildlife and US Army Corps of Engineers. Evidence of required approvals shall be submitted to the City prior to the commencement of any construction activities. All Hydraulic Project Approval conditions and any Army Corp of Engineers permit conditions shall become conditions of approval.
27. A copy of all public agency approvals and approved drawings shall be given to all contractors performing work at the site prior to beginning any construction work.
28. All construction activities shall comply with noise limitations in residential zones per BIMC 16.16.020.
29. Lighting shall be limited to the minimum necessary for safety or as required by the Coast Guard.
30. No overhead wiring or plumbing shall be allowed on the pier/ramp/float.
31. Only non-reflective construction materials shall be used.
32. The pier is to be constructed a minimum of one foot above extreme high water.
33. To mitigate for project construction including fill beneath the OHWM, the proposed mitigation identified in Attachment D (Site Specific Impact Analysis and Mitigation Plan) shall occur prior to final building permit inspection. Mitigation includes removal of the existing damaged concrete bulkhead, partial (50%) replacement with a pile bulkhead, and creation of a "soft shore" pocket beach on the remaining shoreline frontage.
34. The project must include documentation of compliance with the Biological Opinion for National Flood Insurance Program in Puget Sound. Documentation of an Endangered Species Act Section 7 consultation concurrence with NOAA Fisheries, a biological assessment or programmatic compliance with Regional General Permit 6 from the U.S. Army Corps of Engineers must accompany any submittal for a building permit.
35. The authorization granted by this SSDP to construct the proposed dock, bulkhead and pocket beach shall expire within two years unless substantial progress towards completion is undertaken. Authorization for the proposed structures shall terminate five years after the date the permit is approved by the city, unless an extension is granted in accordance with BIMC 2.16.165.F.5.b.iv. If substantive changes to the design, terms or conditions of the project are proposed, revisions to the permit will be reviewed in accordance with WAC 173-27-100.