

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In The Matter of the Application of)	No. PLN-50287
)	
)	
Margaret Dufresne)	
)	
)	
<u>For Approval of a Shoreline Variance</u>)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a shoreline variance to construct a 1,200 square foot residence, and associated appurtenances, adjacent to a marine bluff at 11143 Rolling Bay Walk is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on March 9, 2018. At the hearing, the Hearing Examiner ruled that the record would be left open until March 16, 2018, to allow the Applicant an opportunity to respond, in writing, to public comments received at the hearing.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Kelly Tayara, City Associate Planner
Greg Vause, City Code Enforcement Officer
Robert Grant, Survey Program Manager
Luke Carpenter, Assistant Fire Chief
Peter Corelis, P.E., City Development Engineer
Margaret Dufresne, Applicant
Ron Ellingson
Joan Geraghty
Kathleen Geraghty
Jake Greenberg
Charles Schmid

Exhibits:

The following exhibits were admitted into the record:

1. Shoreline Development Application, received March 2, 2017

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2. Site Plan, Grading Plan and Elevation Drawing, undated, received March 2, 2017
3. Topographic Survey & Slope Analysis (Sheet 1 of 1), dated December 5, 2016
4. Shoreline Permit Decision Criteria, with Applicant Notes, received March 2, 2017
5. Notice of Application, dated April 14, 2017; Affidavit of Publication, *Bainbridge Island Review*, dated April 14, 2017
6. Drainage Plan, Browne Wheeler Engineers, Inc., dated February 23, 2017
7. Site-Specific Impact Analysis Report, Marine Surveys & Assessments, dated February 28, 2017
8. Geotechnical Engineering Consultation Report, Perrone Consulting, Inc., P.S., dated February 14, 2016
9. Geotechnical Report, Aspect Consulting, dated July 20, 2017
10. Information on Third-Party Geotechnical Review:
 - a. Email from Peter Corelis to Kelly Tayara, dated February 26, 2018, with email string
 - b. Letter from Todd Wentworth and Henry Brenniman, Amec Foster Wheeler, to Peter Corelis, dated October 5, 2017
 - c. Letter from Andrew Holmson and Henry H. Haselton, Aspect Consulting, to Margaret Dufresne, dated November 5, 2017; "Step 2" Permit Issuance Form, dated November 7, 2017
11. Letter from Charles Schmid to Josh Machen, dated May 15, 2017
12. Email from Gordon Vittig to Planning & Community Development, dated April 20, 2017
13. Email from Mary Clare to Planning & Community Development, dated May 15, 2017
14. Memorandum from Assistant Chief Luke Carpenter, Fire Marshal, to Josh Machen, dated March 20, 2017
15. Email from Luke Carpenter to Margaret Dufresne, dated February 13, 2018, with email string; Email from Margaret Dufresne to Luke Carpenter, dated February 21, 2018, with email string
16. Memorandum from Peter Corelis to Kelly Tayara, dated January 8, 2018
17. Email from Rob Grant to Kelly Tayara, dated February 20, 2018, with email string
18. Recordings:
 - a. Common Property Line Agreement (No. 200503240117), recorded March 24, 2005
 - b. Common Property Line Agreement (No. 200503240118), recorded March 24, 2005
 - c. Statutory Warranty Deed (No. 201011090299 and 201011080315), recorded November 8 and 9, 2010
 - d. Statutory Warranty Deed (No. 201011080315), recorded November 8, 2010
19. Department of Planning & Community Development, Shoreline Variance Permit (Draft), printed February 27, 2018
20. Email from Margaret Dufresne to Kelly Tayara, dated January 8, 2018, with email string
21. Email from Margaret Dufresne to Kelly Tayara, dated February 2, 2018
22. Email from Margaret Dufresne to Kelly Tayara, dated February 4, 2018, with attached letter responding to public comments

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23. Email from Margaret Dufresne to Kelly Tayara, dated February 10, 2018, with attached comments
24. Applicant Emails:
 - a. Email from Margaret Dufresne to Kelly Tayara, dated February 16, 2018, with Easement Agreement (No. 3164656), recorded March 22, 1999
 - b. Email from Margaret Dufresne to Planning & Community Development, dated February 16, 2018
 - c. Email from Margaret Dufresne to Kelly Tayara, dated February 16, 2018
 - d. Email from Margaret Dufresne to several parties, dated February 19, 2018
 - e. Email from Margaret Dufresne to Greg Vause, dated February 20, 2018
 - f. Email from Margaret Dufresne to Greg Vause, dated February 20, 2018
 - g. Email from Luke Carpenter to Margaret Dufresne, dated February 20, 2018
 - h. Email from Margaret Dufresne to Greg Vause, dated February 21, 2018
25. Letter from Christy Carr to Margaret Dufresne, dated July 10, 2015
26. Letter from Katherine Cook to Margaret Dufresne, Request for Administrative Code Interpretation, dated November 6, 2015
27. Code Interpretation Appeal Decision, Hearing Examiner, dated March 16, 2016
28. Notice of Public Hearing, dated February 16, 2018; Affidavit of Publication, *Bainbridge Island* Review, dated February 16, 2018; Declaration of Mailing, dated February 22, 2018
29. Photos (4), undated
30. Staff Report, dated February 22, 2018
31. Email from Jenine Bogrand and Ken Tyrrell to Kelly Tayara, dated March 9, 2018
32. Email from Margaret Dufresne to Greg Vause, dated February 25, 2018, with attachments
33. Email from Margaret Dufresne to James Weaver, dated February 27, 2018
34. Email from James Weaver to Kelly Tayara, dated February 28, 2018, with email string
35. Email from Margaret Dufresne to Kelly Tayara, dated March 2, 2018, with attachments
36. Email from Margaret Dufresne to Kelly Tayara, dated March 3, 2018, with attachments
37. Email from Margaret Dufresne to Kelly Tayara, dated March 3, 2018, with attachments
38. Email from Margaret Dufresne to Kelly Tayara, dated March 3, 2018
39. Email from Margaret Dufresne to Kelly Tayara, dated March 4, 2018, with attachments
40. Email from Margaret Dufresne to Kelly Tayara, dated March 4, 2018, with attachments
41. Email from Margaret Dufresne to Kelly Tayara, dated March 5, 2018
42. Email from Margaret Dufresne to James Weaver, dated March 5, 2018, with attachments
43. Email from James Weaver to Margaret Dufresne, dated March 5, 2018, with email string
44. Letter from Paul Lozier, dated March 3, 2018
45. Email from James Weaver to Kelly Tayara, dated March 6, 2018, with attachments
46. Email from Margaret Dufresne to Kelly Tayara, dated March 7, 2018, with attachments
47. Email from Margaret Dufresne to Kelly Tayara, dated March 7, 2018, with attachments
48. Email from Margaret Dufresne to Kelly Tayara, dated March 7, 2018, with attachments
49. Email from Gordon Vittig to Kelly Tayara, dated March 8, 2018
50. Email from Margaret Dufresne to Kelly Tayara, dated March 8, 2018, with attachments

51. Email from Dennis Johnson to Kelly Tayara, dated March 8, 2018
52. Email from Kelly Tayara to Olivia Sontag, dated March 9, 2018, with email string
53. Information on Boundary Line Adjustment (various documents)
54. Public Comments from Joan Geraghty, submitted March 9, 2018
55. Public Comments from Kathleen Geraghty, submitted March 9, 2018
56. Public Comments from William Maier, submitted March 9, 2018
57. Email from Margaret Dufresne to Kelly Tayara, dated March 14, 2018

The Hearing Examiner enters the following findings and conclusions based on the admitted testimony and exhibits:

FINDINGS

Application and Notice

1. Margaret Dufresne (Applicant) requests approval of a shoreline variance (SVAR) to construct a 1,200 square foot residence, with associated appurtenances, on an approximately 0.49-acre property that sits between Rolling Bay and a 120-foot marine bluff. Specifically, in addition to constructing a two-story, 1,200 square foot residence situated above a garage, the Applicant would construct a 480 square foot pervious driveway, overlay pavement on Rolling Bay Walk along the property frontage, and install a septic drainfield between existing soldier-pile walls upslope from the property. The property is located at 11143 Rolling Bay Walk.¹ *Exhibit 1; Exhibit 2; Exhibit 9; Exhibit 30, Staff Report, pages 1 and 9.*
2. The City of Bainbridge Island (City) determined that the application was complete on March 30, 2017. On April 14, 2017, the City provided notice of the application as required by Bainbridge Island Municipal Code (BIMC) 2.16.020.K, including mailing notice to property owners within 500 feet of the property and to government agencies and departments, publishing notice in the *Bainbridge Island Review*, and posting notice on the property and at the City's other official posting locations. On February 16, 2018, the City provided notice of the public hearing associated with the application by publishing notice in the *Bainbridge Island Review* and posting notice on-site and at the City's other official posting locations. On February 22, 2018, notice of the hearing was mailed to property owners within 500 feet of the property and government agencies and departments. As discussed in detail below, the City received several comments from area residents in response to its notice materials as well as comments from applicable government agencies and departments. *Exhibit 5; Exhibit 28.*

¹ The property initially contained two contiguous lots with separate addresses and separate parcel numbers. Although the Applicant has yet to complete the City's required process for aggregating the two lots under Bainbridge Island Municipal Code (BIMC) 2.16.090, the property has received a single address (11143 Rolling Bay Walk) and is now identified with a single tax parcel number: 4156-001-004-1006. *Exhibit 17; Exhibit 30, Staff Report, page 2.* A legal description of the property is provided with the statutory warranty deeds. *Exhibit 18.*

State Environmental Policy Act

3. The Washington Administrative Code (WAC) provides that variance applications based on special circumstances applicable to the property, such as size, shape, topography, location, or surroundings, and not resulting in any change in land use or density, are exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). *WAC 197-11-800(6)(b)*. Accordingly, the City determined that the proposal would be exempt from SEPA review. *Exhibit 30, Staff Report, page 7.*

Comprehensive Plan, Zoning, and Surrounding Property

4. The property is designated “Residential – 2” under the City Comprehensive Plan. City staff analyzed the proposal for consistency with the Comprehensive Plan and identified several goals and policies applicable to the proposal,² including:
 - Respecting private property rights protected by the State and U.S. Constitutions.
 - Recognizing that property rights are not absolute but must be balanced with necessary and reasonable regulation to protect the public health, safety, and welfare.
 - Developing context-sensitive regulations for residential development in order to limit clearing, soil disturbance, promote low impact development and reconcile development and conservation.
 - Encouraging residential development that is compatible with the preservation of natural systems.
 - Striving to ensure that basic community values and aspirations are reflected in the City’s planning program while recognizing the rights of individuals to use and develop private property.
 - Protecting landowners from arbitrary and discriminatory actions.
 - Protecting the Island’s natural environment.
 - Accounting for the present and future need to reduce the potential for personal injury, loss of life, or property damage due to natural events, such as flooding, erosion, landslides, seismic events, and climate change.
 - Developing property adjoining or adjacent to critical areas in a manner that minimizes impacts as much as possible and mitigates for impacts that are unavoidable.
 - Protecting landslide hazard areas and erosion hazard areas from the impacts of use and development for the protection of public safety, property, and the environment.

² City staff specifically identified the following goals and policies of the Comprehensive Plan as relevant to the proposal: Guiding Principle #4 and Guiding Policies 4.1 and 4.2; Residential District Goal LU-14 and Policy LU 14.2; Property Rights Goal LU-17; Environmental Policies EN 1.1, 1.2, 6.1, 8.1, 8.2, 8.5, and 8.6; and History and Heritage Policies 3.4 and 3.5. *Exhibit 30, Staff Report, pages 5 and 6.*

- Allowing for clearing, grading, or filling on sloped areas containing landslide hazard and erosion hazard areas only when other alternatives are not feasible and when such activity will not destabilize those areas.
- Decreasing development intensity as the degree of slope increases in landslide hazard and erosion hazard areas.
- Preserving historic and cultural resources.
- Recognizing the probability of discovering Native American cultural resources during project construction.

Exhibit 30, Staff Report, pages 5 and 6.

5. The property is within the “R-2” zoning district. The purpose of the R-2 zoning district is to “provide residential neighborhoods in an environment with special Island character consistent with other land uses such as agriculture and forestry, and the preservation of natural systems and open space, at a somewhat higher density than the R-1 district.” *BIMC 18.06.020.C. Exhibit 30, Staff Report, page 3.*
6. Surrounding properties are also designated Residential – 2 under the Comprehensive Plan and are within the R-2 zoning district. The majority of properties served by Rolling Bay Walk are developed with single-family residences. *Exhibit 30, Staff Report, page 3.*

Background and Existing Site

7. The existing site is located between Rolling Bay and the base of a marine bluff with a history of landslides, including a major slide event in 1997 that significantly damaged several homes and resulted in four deaths. The Applicant’s property was previously developed with a single-family residence that was damaged in the 1997 landslide and later demolished. In 2008, several property owners in the area constructed a landslide debris catchment wall system upslope from their properties to protect homes on Rolling Bay Walk from future landslides. The system consists of two anchored soldier-pile retaining walls, constructed across several properties, including the subject property. *Exhibit 30, Staff Report, page 1.*
8. Rolling Bay Walk, which consists of a concrete bulkhead and a 10-foot wide roadway, separates Rolling Bay and the Puget Sound from the upland portion of the project site. The property extends approximately 160 feet from the shoreline. The marine bluff adjacent to the property is approximately 120 feet in height. The lower third of the site, where the home would be built, inclines between 50 and 80 percent up to the catchment wall system. The space between the catchment walls is flat and is approximately 15 feet wide. The steep slope then continues to the edge of the marine bluff above the catchment walls. *Exhibit 30, Staff Report, page 1.*
9. The Applicant purchased the property in 2010 and, at a pre-application conference on July 9, 2015, was advised that an SVAR would be necessary to develop a single-family residence on the property because, under BIMC 16.12.030.K.4.c.iii of the City’s

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Shoreline Master Program (SMP), development adjacent to a marine bluff would be prohibited. At the Applicant's request, the City conducted an administrative interpretation of BIMC 16.12.030.K.4.c.iii. On November 5, 2015, the City issued its administrative interpretation, confirming that an SVAR would be required to develop the property. The Applicant appealed this interpretation to the Hearing Examiner who denied the appeal on March 16, 2016. The Applicant then filed a Land Use Petition Act (LUPA) petition in Kitsap Superior Court challenging the Hearing Examiner's denial of the appeal. On September 23, 2016, Kitsap Superior Court issued its decision, denying the Applicant's LUPA appeal. No further appeals were filed. *Exhibit 26; Exhibit 27; Exhibit 30, Staff Report, page 2.*

Proposed Shoreline Variance

10. As noted above, the Applicant proposes to construct a 1,200 square foot residence adjacent to a marine bluff, with a 480 square foot pervious driveway, a concrete overlay of Rolling Bay Walk along the property frontage, and the installation of a septic drainfield between the existing soldier-pile walls upslope from the property. The proposed residence would be 60 feet wide as it faces the shoreline and 20 feet deep. An excavation at the toe of the marine bluff of approximately 13 to 15 feet would be required to construct the foundation for the site. The two-story residence would be built above a garage that would sit at the approximate level of Rolling Bay Walk. After completion, the western edge of the proposed residence would be located approximately 16 feet from the face of the lower wall of the landslide debris catchment wall system. With roof overhangs, the proposed residence would create approximately 1,536 square feet of new impervious surface. An 8-foot by 60-foot driveway would also be built between the residence and Rolling Bay Walk. The driveway would be built from permeable pavers so it would not increase the quantity of impervious surfaces but would create 480 square feet of permanent impacts to vegetation on-site. A septic drainfield would be installed, upslope of the residence, between the tiered soldier-pile catchment walls. *Exhibit 1; Exhibit 9; Exhibit 30, Staff Report, pages 1 and 2.*
11. Perrone Consulting, Inc., P.S., provided the initial geotechnical engineering review for the proposal and produced a report, dated February 16, 2016, addressing whether the catchment wall system installed upslope of the project site would provide adequate protection for a single-family residence to be built on the property. The report determines that, even when accounting for "anticipated excavation for the proposed house near the bottom of the slope," the upslope catchment wall system would provide "a static factor of safety of 1.5" and a "seismic factor of safety of 1.0," satisfying the requirements of the municipal code. *Exhibit 8.*
12. Aspect Consulting, LLC, later provided a more thorough analysis of the proposal and produced a Geotechnical Report, dated July 20, 2017. The report notes that: there are no signs of ongoing or incipient movement on the slope adjacent to the proposed residence, including bare soil, tension cracks, prominent groundwater seepage, or uncontrolled

surface water; the soldier-pile catchment wall system did not show any signs of movement or distress and appeared plumb and in relatively good condition; and the potential landslide hazard to the proposed residence has been appropriately mitigated at the site. The Geotechnical Report determined that, ultimately, the proposed project would not “negatively affect the global stability of the geologically hazardous area (steep slope) located at and near the Site” and that the proposal could be “constructed in a relatively stable manner,” so long as certain recommendations are incorporated into the design and construction of the project. The Geotechnical Report provides detailed recommendations that the Applicant would incorporate into the design and construction of the project. *Exhibit 9.*

13. At the City’s request, Amec Foster Wheeler Environment & Infrastructure, Inc. (AMEC), provided third-party review of the geotechnical reports prepared in relation to the project site, including the Perrone report and the Geotechnical Report prepared by Aspect Consulting. On October 5, 2017, AMEC requested clarification on some aspects of the proposal, which Aspect Consulting provided in a letter dated November 7, 2017. On January 23, 2018, AMEC confirmed that all of its questions had been answered and that, with the clarifications provided by Aspect Consulting, the Geotechnical Report it prepared would satisfy all requirements of the municipal code. *Exhibit 10.*
14. Browne Wheeler Engineers, Inc., prepared a stormwater analysis and drainage plan for the Applicant on February 23, 2017. The drainage plan notes that roof drains would discharge onto splash blocks, and runoff would then flow over Rolling Bay Walk to the beach, consistent with existing stormwater flows from the site. The plan provides for best management practices (BMPs) that must be adhered to during construction to ensure that sediment does not leave the site. *Exhibit 6.*
15. Marine Surveys & Assessments prepared a Site-Specific Impact Analysis Report, dated February 28, 2017, assessing the ecological impacts from the proposal. The report assessed the baseline environmental conditions at the site, including local habitats and species, and then determined whether the proposal would result in there being no net loss of ecological functions and processes necessary to sustain shoreline resources. The report determined that, approximately 1,680 feet of vegetation would be permanently removed in development of the site, mostly non-native invasive species, and that short-term impacts to water quality may occur during construction. With mitigation, however, the proposal would meet the required “no net loss” standard. In addition to utilizing BMPs during construction, the Applicant would mitigate impacts by planting a total of 2,496 square feet with native plantings, an area 38 percent larger than the area impacted by impervious surfaces. The report provides a detailed mitigation and monitoring plan that the Applicant would follow to ensure that the “no net loss” standard is met. *Exhibit 7.*

Shoreline Management Act and Shoreline Management Program

16. The Washington State Shoreline Management Act (SMA) and the City's Shoreline Master Program (SMP) govern work within 200 feet of the Puget Sound ordinary high water mark. *Chapter 16.12 BIMC; RCW 90.58.030(2)(d)*. The primary goal of the SMA is to protect the public interest in the state's shorelines through a coordinated development process. The SMA contemplates protecting against adverse effects to public health, land, vegetation, wildlife, and waters, and preserving the public's opportunity to enjoy the physical and aesthetic qualities of the natural shoreline to the greatest extent feasible. Permitted uses in the shoreline must be designed and conducted in a manner to minimize any damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. *RCW 90.58.020*.
17. The City's SMP designates the property as Shoreline Residential environment with an upland designation. *BIMC Table 16.12.030-1*. The purpose of the Shoreline Residential designation is to provide for residential development and appurtenant structures, and appropriate public access and recreational use, that are consistent with the SMA, while protecting existing natural resources, ecological functions, and ecosystem-wide processes, and restoring ecological functions in previously degraded areas. *BIMC 16.12.020.B.2*. Single-family residential development is permitted in the Shoreline Residential designation. In addition, stormwater management is permitted in the Shoreline Residential designation and the Aquatic environment. *BIMC Table 16.12.030-1. Exhibit 30, Staff Report, page 8*.
18. The SMP contains dimensional standards (*BIMC Table 16.12.030-2*), that also encompass zoning requirements. Planning staff analyzed the proposal and determined that these requirements would be met. Specifically, staff determined:
 - Although there is an existing 300 square foot turnaround in the required side yard setback area, and only 200 square feet of impervious surface would normally be allowed in the setback area, the turnaround constitutes an existing non-conforming use. The proposal otherwise satisfies the dimensional standards required for side yards, including providing a 20-foot minimum setback on each side of the proposed residence.
 - The property does not have a required front yard setback because it does not abut a "street" as defined in *BIMC 18.36.030*.
 - There is a 30-foot maximum height standard. This would be verified during building permit review.
 - Approximately 6.3 percent of the site would be covered by impervious surfaces, satisfying the requirement that no more than 20 percent lot coverage occur on-site.*Exhibit 30, Staff Report, page 8*.

19. Under BIMC 16.12.030.B.2, applications for shoreline development, uses, and activities must demonstrate that no net loss of the ecological functions and ecosystem-wide processes necessary to sustain shoreline resources would occur. BIMC 16.12.030.B.2 also requires vegetation replanting for all development that alters existing vegetation. As noted above, Marine Surveys & Assessments prepared a Site-Specific Impact Analysis Report that determined that the “no net loss” standard would be met with the proposal and that required vegetation replanting would occur. *Exhibit 7; Exhibit 30, Staff Report, pages 9 and 10.*
20. Under BIMC 16.12.030.B.3, all development within the shoreline jurisdiction must be located and designed to protect existing native vegetation from disturbance to the fullest extent possible, mitigate impacts to existing vegetation, and meet the standard of no net loss of ecological functions and processes. Development must also ensure that the shoreline buffer does not extend beyond an existing public paved street or any area that is determined to be functionally isolated from the shoreline. In addition, existing shoreline views must be maintained. Planning staff determined that these requirements would be satisfied, based on submitted plans and the Site-Specific Analysis Report. *Exhibit 30, Staff Report, page 11.*
21. Under BIMC 16.12.030.B.5, shoreline development shall minimize any increase in surface runoff through compliance with the standards established in the City’s Stormwater Management Manual (Chapter 15.20 BIMC). As noted above, Browne Wheeler Engineers, Inc., prepared a stormwater analysis and drainage plan for the proposal addressing this concern. *Exhibit 30, Staff Report, page 11 and 12*
22. Under BIMC 16.12.030.C.2.I, shoreline use and development must preserve and protect cultural resources. If cultural resources are discovered, the Applicant would contact the City and the Washington State Office of Archaeology and Historic Preservation. *Exhibit 30, Staff Report, page 12.*
23. BIMC 16.12.040 provides specific shoreline use and development regulations. These standards dictate specific requirements for residential development related to protecting ecological functions, protecting existing views, and designing structures to avoid the need for shoreline stabilization and flood protection. Planning staff analyzed the proposal and determined that these standards would be met. Specifically, staff determined:
 - The “no net loss” standard would be met and the proposal would meet stormwater and water quality requirements.
 - The proposal would meet dimensional and height standards, except for existing nonconforming development (i.e., the turnaround), which would be allowed to continue as a pre-existing nonconforming use under BIMC 16.12.030.C.1.
 - The project would meet vegetation management regulations.

- The site plan shows that the residence would be landward of the shoreline view setback, protecting the views from the existing primary residences on adjacent properties.
- Geotechnical analysis has been provided addressing slope stability on-site.
- The SMP would allow for repair or replacement of the existing bulkhead. Although new development is generally not allowed where structural shoreline stabilization would be required, WAC 173-26-221(2)(c) provides for exceptions where, as here, stabilization is necessary to protect allowed uses where no alternative locations are available to site a residence and no net loss of ecological functions would result.

Exhibit 30, Staff Report, pages 13 and 14.

24. The SMP also addresses critical areas, including Geologically Hazardous Areas. *BIMC 16.12.060.K*. As noted above, Aspect Consulting prepared a geotechnical report for the Applicant, dated July 20, 2017, and additional suggestions (in response to third-party review) on November 7, 2017, assessing the geological hazards associated with the site. Aspect Consulting determined that, with mitigation measures, the proposal would not negatively affect the global stability of the hazardous area and would meet safety factors for static and seismic conditions. Third-party review verified this information. *Exhibit 30, Staff Report, pages 15 and 16.*
25. Planning staff also assessed the specific variance criteria of BIMC 2.16.165.G.4. Staff determined that:
 - Single-family residential development is a reasonable use of a residentially-zoned property. Because SMP regulations would prohibit development on or within the required buffer from the marine bluff adjacent to the property, strict application of the SMP would preclude development of a single-family residence on the property.
 - The property is completely encumbered by a geologically hazardous area.
 - Properties in the vicinity are similarly developed with single-family residences located on the face of, or within the buffer of, a marine bluff. The Comprehensive Plan encourages residential development compatible with natural systems. Although impacts to critical areas should be avoided when possible, several policies address development where hazards can be mitigated, including policies on clearing and grading activities within geologically hazardous areas when other alternatives are not feasible and when these activities will not destabilize critical areas.
 - The geotechnical information demonstrates that a residence can be constructed without destabilizing the area, and the Site-Specific Analysis demonstrates that no adverse impacts to the shoreline would occur.
 - Single-family residential development is consistent with other use and development in the area, and the variance would not constitute a grant of special privilege.

- A shoreline variance is the only mechanism available to the Applicant in order to construct a residence on the property.
- The proposal provides for residential development that results in no adverse impacts to the shoreline environment.
- Most of the properties served by Rolling Bay Walk are already developed. The two undeveloped lots served by Rolling Bay Walk are similarly encumbered by the marine bluff and would likely require shoreline variances to be developed. Redevelopment or future development of shoreline properties would also need to demonstrate no net loss of ecological function and processes. Accordingly, additional requests for like actions in the area should not result in substantial adverse effects.

Exhibit 30, Staff Report, pages 16 through 18.

Written Comments

26. As noted above, the City received written comments from several applicable departments and government agencies in response to its notice materials. The application materials included an approved Building Site Application from the Kitsap Public Health District for the septic proposed for the site and a water availability letter. The Bainbridge Island Fire District noted that the project must comply with all provisions of the Fire Code, that the existing access to the site on Rolling Bay Walk is nonconforming, and that residential fire sprinklers would be required for the future residence. The City's Development Engineer, Peter Corelis, also recommended several conditions of approval related to construction requirements and best management practices for the proposal. *Exhibits 14 through 16.*
27. The City received several written comments from area residents in response to its notice materials. Specifically:
 - Charles Schmid expressed concern about the safety of area residents in light of the history of landslides in the immediate vicinity. He also expressed concern that Rolling Bay Walk would be damaged during construction and that insufficient analysis of the septic drainfield has occurred.
 - Gordon Vittig noted that he lives directly next door to the property and is worried about access to his home during construction. He also expressed concern that the Applicant has been clearing brush and debris from the property and has threatened to bar access to the turnaround easement on the property several times.
 - Mary Clare echoed concerns about the potential damage to Rolling Bay Walk during construction and, in addition, expressed concern that older septic systems sited under Rolling Bay Walk would be crushed during construction creating an ecological disaster.
 - Jenine Bogrand and Ken Tyrrell requested that the variance application be denied and expressed concerns about potential damage to Rolling Bay Walk, inadequate plans for storing equipment or construction supplies on impervious surfaces, use

of the shared community parking lot for equipment storage, and potential for the septic system to create wet soil conditions in a seismic hazard area.

- Paul Lozier noted that he has concerns with the geotechnical assessment of the site, the potential impact to upslope homeowners, and the possible impacts from sea level rise due to climate change.
- Dennis Johnson expressed concerns similar to other area residents about access to homes during construction and the potential for Rolling Bay Walk to be damaged. He requested that all materials and equipment be delivered by barge or that several steps be taken to ensure Rolling Bay Walk is not damaged during construction, including installing steel plating along the entire length of the drive.
- William Maier, whose family has owned a home on Rolling Bay Walk for four generations, provided details on the history of the area and the devastating landslide that killed four people. He expressed concern about excavating part of the toe of the marine bluff, the allowed timing for construction, and the general dangers associated with a construction project like this one.

Exhibits 11, 12, 13, 31, 44, 49, 51, and 56.

28. The Applicant provided written responses, addressing several of the public comments received by the City. Specifically, the Applicant noted:

- Residents would not be blocked from accessing their homes during construction.
- Construction would not create any parking issues.
- Residents would be informed of construction schedules.
- Once the foundation and septic are complete, construction vehicles would be able to park in the driveway.
- The City may not require specific standards on Rolling Bay Walk because it is a private lane controlled by an easement. The Applicant, however, would repair any damage to Rolling Bay Walk that occurs because of construction.
- Any septic tanks sited under Rolling Bay Walk would be protected with steel plates during construction.
- There are no weight restrictions on Rolling Bay Walk.
- The proposed septic system would be better for the environment than many of the existing systems that were constructed several decades ago because it is a state of the art system that would be tested and monitored yearly.
- The proposal would have no impact on upland residences.

Exhibits 22 and 23.

Additional Issues Raised by the Applicant

29. In addition to providing written responses to comments received in advance of the hearing, the Applicant raised several issues in email exchanges with the City in advance of the hearing and requested that these exchanges be included in the record. *Exhibits 15, 20, 23, 24, 32 – 43, 46 – 48, and 52.*

30. The Applicant contends that a deck on an adjacent property obstructs Rolling Bay Walk such that construction vehicles and emergency vehicles may not access the length of the private lane, that no permits were obtained for the deck, and that the deck violates requirements of the municipal code. City Building Official James Weaver determined that valid permits had been issued for the deck in question and that the deck does not violate requirements of the municipal code. *Exhibits 15, 23, 24, 32, 33, 34, 36, 39, 41, 45, and 52.*
31. The Applicant contends that she does not need to go through the City's process for a boundary line adjustment (BLA) in order to aggregate the two lots that comprise the subject property. *Exhibits 20, 35, 46, and 47.*
32. The Applicant contends that she need not obtain FEMA documentation because the Base Flood Elevation Line (BFE) for the property is at 15 feet and the proposed residence would have a base elevation of 18 feet. City Building Official James Weaver responded to this contention, noting that the requirement for obtaining FEMA documentation would only be removed when building plans are finalized because building plans often change. *Exhibits 37, 40, 42, 43, and 48.*

Testimony

33. City Associate Planner Kelly Tayara testified generally about the history of the property and the process that occurred in reviewing the proposal. She noted that a code enforcement issue has recently occurred on the Applicant's property involving clearing vegetation without a required permit. *Testimony of Ms. Tayara.*
34. Code Enforcement Officer Greg Vause testified that the City has offered the Applicant an opportunity to get an after-the-fact permit related to the clearing of vegetation on the property. He noted that restoration of the vegetation would not be necessary if the proposal to construct a residence is approved. Mr. Vause also testified about the issue with the deck on the adjacent property. The Hearing Examiner noted, however, that he would not have the authority to address the Applicant's concerns about the deck as part of the review process for a shoreline variance on a different property. The Hearing Examiner also noted that the code enforcement issue on the subject property is not currently before the Hearing Examiner and would not be addressed as part of the decision on the SVAR. *Testimony of Mr. Vause; Comments of the Hearing Examiner.*
35. City Survey Program Manager Robert Grant testified that the municipal code has a required process for aggregating lots, and the Applicant has not yet followed that process. *Testimony of Mr. Grant.*
36. Fire Marshal and Assistant Fire Chief Luke Carpenter testified that Rolling Bay Walk is an existing, non-conforming private road that does not meet current access requirements under the fire code. Accordingly, residential fire sprinklers would be required for the

proposed residence. Mr. Carpenter acknowledged that it is difficult to get fire trucks and other emergency vehicles down on Rolling Bay Walk. He noted, however, that—in the event of a serious fire—the department has access to a fireboat that could combat a fire from Rolling Bay. *Testimony of Mr. Carpenter.*

37. City Development Engineer Peter Corelis explained the review process that occurred concerning the geotechnical considerations of the proposal. He explained that the landslide debris catchment wall system upslope from the property provides adequate protection from potential hazards and that extensive geotechnical review of the site has occurred. *Testimony of Mr. Corelis.*
38. Applicant Margaret Dufresne testified that she did not destroy or remove vegetation on her property but, instead, trimmed blackberry bushes so that the power company could access its easement. The Hearing Examiner again noted that code enforcement matters fell beyond the scope of the SVAR hearing. In relation to the issue with obtaining a boundary line adjustment (BLA), Ms. Dufresne explained that Kitsap County was requiring her to aggregate the lots because neither lot would have been large enough for the proposed septic system. She stressed that she has done all that is necessary, at the County level, to have the lots aggregated. Ms. Dufresne expressed concern that the City would require her to pay for a survey as part of the BLA process even though the County does not require a survey for lot aggregation. Ms. Dufresne made several efforts to steer her testimony toward discussion of the deck on her neighbor's property. The Hearing Examiner stressed that he would be unable to address that issue and it went beyond the scope of the SVAR hearing. Ms. Dufresne discussed construction plans for the proposal and specifically noted that, despite there being no weight restrictions on Rolling Bay Walk, her contractors would only use half loads. She also noted that her contractor would cover septic systems in the road with steel plating during construction and that she would repair any damage to the road that may occur because of construction. Ms. Dufresne also reiterated that she does not need to obtain FEMA documentation. *Testimony of Ms. Dufresne; Comments of the Hearing Examiner.*
39. Ron Ellingson testified that he would be present during construction of the proposal, on Ms. Dufresne's behalf, to monitor the site and keep track of things. Mr. Ellingson said he would provide his contact information to property owners potentially affected by construction so that any issues would be able to be quickly resolved. *Testimony of Mr. Ellingson.*
40. In response to Ms. Dufresne's testimony, Mr. Grant testified that BIMC 2.16.090(c) dictates the BLA process that must be followed to aggregate two contiguous properties. He acknowledged that, because the BLA relevant to the Applicant's property would only involve eliminating an interior line and not changing any monuments or creating additional lines, a record survey would not be required. The Applicant would merely need to fill out the appropriate paperwork with the City. *Testimony of Mr. Grant.*

41. Ms. Tayara testified in response to Ms. Dufresne's testimony. She noted that, although City Building Official James Weaver could not attend the hearing, he had already addressed Ms. Dufresne's contention about FEMA certification in an email (Exhibit 43), as described above. *Testimony of Ms. Tayara.*
42. Area resident Joan Geraghty testified that five generations of her family have lived on Rolling Bay Walk and that her parents purchased their home in 1967. She noted that her home was destroyed in the 1997 landslide, and it took 10 years to rebuild because they wanted to ensure that the rebuild went responsibly. Ms. Geraghty expressed concern that the Applicant is not committed to the same approach of responsible building as evinced by the pending code enforcement matter related to vegetation removal and the Applicant's failure to account for the fragile nature of Rolling Bay Walk in planning construction with heavy equipment. She also noted concern about the shared waterline that crosses the Applicant's property and whether construction would impact it.³ *Testimony of Ms. J. Geraghty.*
43. Kathleen Geraghty testified that she owns the home with the deck that the Applicant has raised so many issues about. Ms. Geraghty stated that her family has been diligent about obtaining required permits over the years and that the house has had a deck for over 40 years. She also reiterated the concerns expressed by others about the fragility of Rolling Bay Walk, protecting the beach, ensuring that construction plans do not unreasonably impact the community, and ensuring the integrity of the community's water source.⁴ *Testimony of Ms. K. Geraghty.*
44. Jake Greenberg testified that he is a lifetime resident of the area. He stressed that Rolling Bay Walk is not really a road but, at best, a private drive. Mr. Greenberg explained that, in the late 50s, a boardwalk along the beach provided access to the homes. Back then, it was not uncommon for very large timber to wash ashore on the beach. Eventually, rather than remove the timber, several residents decided to pour concrete over the logs to create a bulkhead/drive and that was how Rolling Bay Walk happened. Mr. Greenberg stressed that, because of this haphazard development process, many parts of Rolling Bay Walk are in very poor condition. He is concerned that, if a significant portion of the drive were to fail, the bulkhead itself would fail too. Mr. Greenberg also discussed construction of the upslope catchment wall and the efforts that were taken during construction to avoid damaging Rolling Bay Walk. He stressed that it would be best to have the entire length of Rolling Bay Walk armored during construction. *Testimony of Mr. Greenberg.*

³ Ms. J. Geraghty provided a typed copy of her comments as an exhibit (Exhibit 54).

⁴ Ms. K. Geraghty provided a typed copy of her comments as an exhibit (Exhibit 55).

45. Charles Schmid testified about the 1997 landslide and reiterated comments he submitted in advance of the hearing (Exhibit 11). *Testimony of Mr. Schmid.*
46. Ms. Dufresne responded to the testimony of area residents. She acknowledged that Rolling Bay Walk is fragile but that it is a private road without specific requirements and that she would fix any damage that occurs during construction. She stressed that the steps that were taken to construct the catchment wall were appropriate given the types of heavy materials being used, but the circumstances here are very different. She noted that storage of materials should not be an issue because, after the foundation is complete, there would be plenty of space for storage on her own property. Ms. Dufresne stressed that construction would not cause access problems for other neighbors. Finally, she noted that the Site-Specific Impact Analysis Report addressed the ecology on-site and showed that the proposal would meet the “no net loss” standard.⁵ *Testimony of Ms. Dufresne.*

Staff Recommendation

47. The City staff reviewed the SVAR application and made no recommendation on the application to the Hearing Examiner, but provided 18 proposed conditions, should the SVAR be approved. Ms. Dufresne testified that she has no issue with the conditions recommended by the City apart from the requirement that she follow the City’s BLA process and obtain FEMA certifications. *Exhibit 30, Staff Report pages 1, 19 through 22; Testimony of Ms. Dufresne.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and approve, approve with conditions, deny, or remand a request for a shoreline variance. *BIMC 2.16.100.C.6.a.*

Criteria for Review

Shoreline Management Act

A request for a shoreline variance must be reviewed under the state Shoreline Management Act. The Shoreline Management Act is codified at RCW 90.58.020. In promulgating the Shoreline Management Act of 1971, the legislature recognized that “ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development” of the state’s shorelines. *RCW 90.58.020*. The legislature also determined that “unrestricted construction on the privately owned or publicly owned shorelines of the state is

⁵ As noted above, the record was left open to allow Ms. Dufresne additional time to respond to comments submitted at the hearing. Ms. Dufresne focused her response on comments made by neighboring property owners that she perceived to be “harmful and untrue” and strongly objected to the characterization that she disregards the rules, would engender a lack of trust in the community, and would act recklessly in developing her property. Ms. Dufresne noted that these comments were “pretty damning and caused [her] a great deal of stress.” Ms. Dufresne stressed that, in regards to the potential code violation, she does not believe she violated the municipal code and, further, that she was simply doing what the power company asked of her. *Exhibit 57.*

not in the best public interest.” *RCW 90.58.020*. Accordingly, the Shoreline Management Act requires local governments to develop a master program to regulate shoreline uses consistent with its guidelines. *RCW 90.58.080(1)*.

The Department of Ecology adopted regulations to implement the Act. Chapter 173-27 of the Washington Administrative Code (WAC) establishes criteria for shoreline variance review, which the City has adopted as part of its Shoreline Master Program. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional, or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on an applicant or thwart the policies set forth in *RCW 90.58.020*. *WAC 173-27-170*.

Under the City’s SMP, variance permits for development located landward of the ordinary high water mark may be authorized provided an applicant can demonstrate all of the following:

- i. The strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
- ii. The hardship . . . is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant’s own actions;
- iii. The design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
- iv. The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
- v. The variance requested is the minimum necessary to afford relief; and
- vi. The public interest will suffer no substantial detrimental effect.

BIMC 2.16.165.G.4.a.

WAC 173-27-170 and the City SMP also dictate that “consideration should be given to the cumulative impact of additional requests for like actions in the area.” *BIMC 2.16.165.G(4)(c)*. Both instruct that, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should remain consistent with the policies of *RCW 90.58.020* and not produce substantial adverse effects to the shoreline environment. *WAC 173-27-170(4)*; *BIMC 2.16.165.G.4.c.*

City of Bainbridge Island Shoreline Master Program Policies and Regulations

The Hearing Examiner must also review the relevant City of Bainbridge Island Shoreline Master Program (SMP) goals and policies and general regulations when reviewing a shoreline variance

application. The City's SMP is intended to implement the Shoreline Management Act by:

1. Planning for and guiding the orderly development of the shoreline in a positive, effective, and equitable manner, protecting and restoring shoreline resources, and helping to assure public access to the shoreline;
2. Promoting the health, safety, and general welfare of the community by providing long-range, comprehensive policies and effective, reasonable regulations for use and development of Bainbridge Island's shorelines;
3. Ensuring, at minimum, no net loss of shoreline ecological functions and ecosystem-wide processes;
4. Planning for the restoration of shorelines that have been impaired or degraded in the past and in a manner that educates the community in the use and protection of its shorelines;
5. Adhering to and fostering the policies of the Act contained in RCW 90.58.020 for shorelines of the state; and
6. Improving the water quality of the Puget Sound.

BIMC 16.12.010.A.

The criteria for review adopted by the City of Bainbridge Island City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

1. **Strict application of the bulk and dimensional standards set forth in the City's Shoreline Master Program would preclude or significantly interfere with reasonable use of the property.** Applicable policies of the Shoreline Management Act (SMA) include those to foster "all reasonable and appropriate uses"; protect against adverse effects to the public health, the land, and vegetation and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alterations to the natural condition of the shoreline. Permitted shoreline uses must be designed to "minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water." *RCW 90.58.020.* Here, the SMP would prohibit any development of the property in light of its proximity to the marine bluff, essentially depriving the property of all economic use. Single-family residential development is a reasonable use of property that is designated as Residential – 2 under the Comprehensive Plan and zoned for residential development. *Findings 1, 4, 5, 9, 10, and 25.*
2. **The hardship is the result of unique conditions such as irregular lot shape, size, or natural features and not from deed restrictions or the Applicant's own actions.** Between Rolling Bay and the marine bluff, the property is completely encumbered by

critical areas and the need for an SVAR is not a result of the Applicant's own actions or other restrictions on the property. *Findings 7 – 9, 23 – 25.*

3. **With conditions, the design of the project would be compatible with other permitted activities in the area and would not cause adverse effects to adjacent properties or the shoreline.** Adjacent residences and other residences in the vicinity have similar residences developed adjacent to the marine bluff with appurtenances adjacent to the shoreline. The Applicant would provide on-site mitigation to ensure that the proposal does not negatively impact shoreline ecology, as discussed in the Site-Specific Analysis. The geotechnical aspects of the proposal were assessed multiple times, including by the City's third-party reviewer, and it was determined that the proposal would not destabilize the area. In addition, project plans show that the proposal would not impact the views of adjacent properties.

Conditions are necessary to ensure that the Applicant: obtain appropriate permits, including clearing, grading, and building permits; aggregate the two lots as required by the City's BLA process; provide pre- and post-construction FEMA Elevation Certificates and a FEMA flood proofing certificate unless such requirement is waived by the City's FEMA responsible official in consultation with the Department of Ecology; follow the recommendations of the geotechnical engineer; comply with all provisions of the fire code; install fire sprinklers; provide a staging plan and parking plan for construction materials, activities, and vehicles; provide all information required by the City Engineer; prepare a bluff management plan; provide a planting plan and implement such plan prior to occupancy or provide appropriate financial assurances; ensure that the compensatory mitigation planting area would be maintained in perpetuity; record an indemnification agreement with the City; stop work if historical or archeological artifacts are uncovered; and refrain from beginning work until the Department of Ecology has approved the SVAR and all appeal periods have passed.

The Applicant shall also designate a contact person that can be reached at all times during construction and such contact information shall be provided to all area residents potentially impacted by construction. In addition, to mitigate the potential for damage to Rolling Bay Walk a civil engineer licensed in the state of Washington shall review the staging plan and parking plan for construction materials, activities, and vehicles to ensure that Rolling Bay Walk has sufficient structural integrity to accommodate proposed construction loads. The civil engineer shall inform the City Engineer of any recommended changes to the plan in advance of the beginning of any construction, including whether alternative delivery or construction methods, like barging, would be necessary. *Findings 1 – 47.*

4. **The variance would not constitute a grant of special privilege and would be the minimum necessary to afford relief.** Single-family residential development is consistent with other use and development in the area, and the variance would not

constitute a grant of special privilege. The Applicant is proposing a moderate (1,200 square foot) size home consistent with development in the community. A shoreline variance is the only mechanism available to the Applicant in order to allow construction of a residence on the property. *Findings 1, 4 – 47.*

5. **With conditions, the public interest would not suffer substantial detrimental effects from approval of the variance.** The City provided reasonable notice and opportunity to comment on the proposal. Implementing requirements of the stormwater and drainage plan, geotechnical plans, and the Site-Specific Impact Analysis Report would ensure that the proposal would not impact the shoreline ecology or other properties in the area. Although area residents have expressed concern over the proposal, required conditions would ensure that the proposal does not create substantial detrimental effects on the community.

As stated in Conclusion 1, conditions are necessary to ensure that the proposal meets all criteria required for approval. *Findings 1 – 47.*

6. **Consideration has been given to the cumulative impact of additional requests for like actions in the area.** The majority of the properties served by Rolling Bay Walk are already developed. Future actions on pre-existing lots are unlikely to require a shoreline variance. Redevelopment or future development of shoreline properties, however, would likely require an SVAR, and future applicants would also be required to meet the “no net less” standard. Accordingly, additional requests in the area should not result in substantial adverse affects to the shoreline environment, even when considered cumulatively. *Findings, 1, 4 – 47.*

DECISION

Based upon the preceding findings and conclusions, the request for a shoreline variance to construct a 1,200 square foot residence adjacent to a marine bluff, with associated appurtenances, at 11143 Rolling Bay Walk is **APPROVED**, with the following conditions:

1. Prior to any construction activities, the Applicant shall obtain the appropriate permits from the City of Bainbridge Island, including but not limited to clearing, grading, and/or building permits.
2. Prior to building permit issuance, the parcels shall be aggregated in accordance with Municipal Code Land Use Review Procedures (Chapter 2.16 BIMC). Application for Boundary Line Adjustment shall be filed with the Department of Planning and Community Development on prescribed forms and shall include fees as required by resolution of the City Council. Under BIMC 2.16.090.C.4, a final survey prepared by a licensed surveyor is not required because the Applicant is aggregating two adjacent lots.

3. Except for modifications reflecting compliance with these conditions of approval, the construction permit application shall substantially conform to the plans approved through this variance. Unless waived by the City's FEMA responsible official (in consultation with the Department of Ecology), the construction permit shall include the following:
 - A. The Applicant shall provide pre- and post-construction Federal Emergency Management Agency (FEMA) Elevation Certificates which are prepared by a surveyor licensed in the State of Washington. The survey(s) shall provide the limits of the flood plain and the finish floor elevation of the residence.
 - B. The Applicant shall provide a FEMA flood proofing certificate prepared by a civil engineer licensed in the State of Washington, along with a report demonstrating no adverse effect to FEMA Endangered Species Act listed species.
4. All construction and associated activities shall follow the recommendations of the geotechnical engineer and the submitted geotechnical reports.
5. The proposed project shall comply with all provisions of the adopted Fire Code.
6. Residential fire sprinklers are required for any future dwellings.
7. Application for building permit shall include a staging plan and parking plan for construction materials, activities and vehicles. The plans shall demonstrate unobstructed vehicular access to homes served by Rolling Bay Walk, except: The Applicant may demonstrate that impacted homeowners agree to vehicular access obstruction through a notarized document recorded with the Kitsap County Auditor, provided the Fire Marshal finds that the agreement sufficiently addresses public health and safety. Should construction by barge be proposed, such activities require specific approvals or permits from the City of Bainbridge Island, the Washington State Department of Fish and Wildlife, the Army Corps of Engineers, and State Agency Lands permission for tideland activities; evidence of required approvals or permission shall be submitted to the City prior to the commencement of any construction activities.
8. A civil engineer licensed in the State of Washington shall review the staging plan and parking plan for construction materials, activities, and vehicles to ensure that Rolling Bay Walk has sufficient structural integrity to accommodate proposed construction loads. The civil engineer shall inform the City Engineer of any recommended changes to the plan in advance of construction beginning, including whether alternative delivery or construction methods, like barging, would be necessary.
9. The Applicant shall designate a contact person that can be reached at all times during construction and this contact information shall be provided to all area residents potentially impacted by construction of the project.

10. The Applicant shall provide the following information / comply with the following conditions to the satisfaction of the City Engineer:
- A. Application for a construction permit shall include a Stormwater and Pollution Prevention Plan (SWPPP), otherwise known as an erosion control plan, to be prepared by a licensed civil engineer.
 - B. The application for a construction permit shall be reviewed and receive concurrence from the geotechnical engineer of record. The concurrence shall be supplied in the form of a plan review letter and a signed a stamped Step 2 Form: Construction in a Geologically Hazardous Area.
 - C. Any earthwork occurring during the wet season from October 1 through April 1 of any year shall be authorized by the geotechnical engineer prior to commencing.
 - D. Construction monitoring of geotechnical related tasks such as erosion control, excavation, fill placement, shoring wall construction, deep foundation element installation such as pin piles, and drainage shall be required during the construction phase.
 - E. Continual observation and monitoring of earthwork, shoring, and erosion control by the geotechnical engineer shall occur at a frequency to be determined by the geotechnical engineer.
 - F. Any full-depth reconstruction of the existing turnaround shall consist of permeable materials unless otherwise recommended by the geotechnical engineer.
 - G. All pervious site areas disturbed during construction shall require soil amendment per Stormwater Management Manual for Western Washington BMP T5.13.
 - H. Nearing to completion of the work, an evaluation by the geotechnical engineer of the upper catchment retaining wall shall be made to determine whether any accumulated slide debris requires removal from the back of the wall in order to restore the full design capacity of the wall to mitigate landslide debris from reaching the residence. The work shall be performed at the recommendation of the geotechnical engineer prior to issuing any occupancy certificate for the new residence.
 - I. An as-built certification letter and Step 3 Form: As-Built Certification signed and stamped by the geotechnical engineer shall be required prior to issuance of any certificate of occupancy (temporary or permanent).

11. Temporary shoring walls to allow for safe excavation are authorized. While the construction design may permanently incorporate these walls into the foundation system of the home, permanent walls which are not integrated into the foundation system are not approved through this authorization.
12. A bluff management plan shall be provided with building permit application. The plan shall be prepared by qualified professional(s) and shall address vegetation management for slope stability and ecological functions for a ten-year period. At a minimum, the plan shall include: A geotechnical analysis of slope stability as defined in BIMC 16.12.060.K; a site plan showing existing vegetation location and species; an analysis of identified vegetation appropriate for removal or alteration; a mitigation plan developed according to the Environmental Impacts and Vegetation Management sections of the Shoreline Master Program (BIMC 16.12.060.C.2 and C.3).
13. A planting plan approved by the geotechnical engineer shall be submitted with building permit application.
 - A. The planting plan shall provide for replanting the entire area disturbed by construction, less the area dedicated to new hard surface, provided: The planting plan may provide for modest-sized (e.g., a total of 200 square feet) non-vegetated areas to provide for typical residential use such as an outdoor seating area, path to an herb garden.
 - B. The planting plan shall include an annotated list of proposed plants, spacing specifications and plant location; the plan must be prepared by a qualified professional.
 - C. The planting plant shall clearly delineate the compensatory mitigation area (2,496 square feet) identified in the Site Specific Analysis submitted with this application).
 - D. The plan shall include maintenance and monitoring plans for the compensatory mitigation planting area. The monitoring plan shall outline mitigation goals, performance standards and monitoring and contingency actions. Monitoring of the mitigation area shall be completed annually for a period of five years beginning in the first fall following plant installation. The Applicant shall submit to the City results of annual monitoring on or before December 31 of each year of monitoring.
 - E. Unless demonstrated to be infeasible by the geotechnical engineer, plantings must be multi-storied, diverse species that are native to the Central Puget Lowland

marine riparian zone. Deciduous trees must be six-to-eight feet in height and two-inch caliper, and evergreen trees must be six feet in height at time of planting.

- F. Any new plantings shall avoid or minimize the need for chemical fertilizers, pesticides, herbicides, and fungicides that could contaminate surface or ground water or cause adverse effects of shoreline ecological functions and ecosystem-wide processes.
- 14. Plantings must be installed prior to temporary or final occupancy unless, to ensure optimal planting season, the City accepts financial assurity in lieu of completion in the amount of 125 percent of the plantings; the assurity shall include maintenance and monitoring costs for compensatory mitigation planting.
 - A. If the Applicant requests to financially assure planting mitigation in lieu of completion, a financial estimate which is approved by the Department shall be required prior to scheduling temporary or final occupancy inspection.
 - B. Any such assurance shall be in place prior to scheduling temporary or final occupancy inspection, and shall enumerate in detail the items being assured.
 - 15. Prior to final building occupancy approval or release of performance assurity, the Applicant shall provide financial assurance in the amount of 50 percent of the compensatory mitigation planting maintenance and monitoring costs. Failure to submit one or more monitoring reports shall be considered non-compliance with the conditions of approval of the shoreline permit and may result in forfeit of all or a proportional amount of the maintenance and monitoring assurance device.
 - 16. The Applicant shall provide a conservation easement or similar mechanism to ensure that the compensatory mitigation planting area will be maintained in perpetuity.
 - 17. Prior to any construction activity, the Applicant shall record an Indemnification Agreement (BIMC 16.12.060.K).
 - 18. Work shall immediately stop if any historical or archaeological artifacts are uncovered during excavation or construction 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.
 - 19. As provided in WAC 173-27-130, construction pursuant to this permit shall not begin and is not authorized for 30 days from the date of filing with the Department of Ecology, and an additional 21 day appeal period, has expired.

20. A land use permit automatically expires and is void if the Applicant fails to file for a building permit or other necessary development permit within three years of the effective date of the permit unless (a) the Applicant has received an extension for the permit; or (b) the permit provides for an extended time period (BIMC 2.16.020.M).

Decided this 30th day of March 2018.



Andrew M. Reeves
Hearing Examiner
Sound Law Center