

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

In The Matter of the Application of)	No. PLN-50958
)	
Cihan Anisoglu, on behalf of CKCB)	CKCB SPR/SSDP/SVAR
Madison Avenue Development, LLC)	
)	
)	
For Approval of a Site Plan, Design Review,)	
Shoreline Substantial Development)	FINDINGS, CONCLUSIONS,
<u>Permit, and Shoreline Variance</u>)	AND DECISION

SUMMARY OF DECISION

The Applicant requests approval of a site plan, a completed design review, and a Shoreline Substantial Development Permit to develop a 10-unit residential building consisting of two townhomes and 8 one-bedroom apartments. The building would be located between 220 and 270 Madison Avenue South. These three requests meet the criteria for review and are **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

In addition, the Applicant requests approval of a Shoreline Variance to construct two elevator/stair towers an additional five feet above the height limit otherwise applicable to the proposed development. This request is **DENIED** because it does not comply with the criteria for approval of a shoreline variance as required by the City Council.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on February 14, 2019.

Testimony:

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

Olivia Sontag, City Planner
Cihan Anisoglu, Applicant Representative
Peter Corelis, P.E., City Development Engineer
John Kist
Christopher Brookes
David Schmid
David Korten
Fran Korten
Robert Pratt

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Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated February 7, 2019
2. Revised Notice of Application/ Hearing/SEPA Comment Period, dated June 8, 2018
3. Mailing list, as of May 31, 2018, with Legal Invoice, *Bainbridge Island Review*, #BIR811183, dated June 8, 2018; Affidavit of Publication, *Bainbridge Island Review*, dated June 11, 2018; and Classified proof, published June 8, 2018
4. Public comments
 - a. Email from Brian Berdan to PCD, dated April 6, 2018
 - b. Email from Robert Pratt to PCD, dated April 12, 2018
 - c. Letter from Kenneth R. DeWitt and Terry M. Lande, Bainbridge Island Metro Park & Recreation District, to Department of Planning and Community Development, dated December 8, 2017
 - d. Letter from Christopher Brookes to Olivia Sontag, dated April 24, 2018
 - e. Email from Eric Edenholm to Olivia Sontag, dated May 4, 2018, with attachments
 - f. Letter from Charles Schmid to Olivia Sontag, dated May 8, 2018
 - g. Email from L. Storck to PCD, dated May 11, 2018
 - h. Email from Christopher Brookes to PCD, dated June 11, 2018
 - i. Email from Christopher Brookes to Olivia Sontag, dated July 6, 2018
 - j. Background material from Charles Schmid, Waterfront Trail Committee, dated July 9, 2018
 - k. Letter from Christopher Brookes and Janet Brookes to Olivia Sontag, dated July 14, 2018
 - l. Letter from John Kist to Olivia Sontag, dated July 19, 2018
 - m. Letter from William Standley to Olivia Sontag, dated July 20, 2018
 - n. Letter from David And Frances Kortzen to Olivia Sontag, undated
 - o. Email from Robert Pratt to Olivia Sontag, with email string, dated February 6, 2019
5. Site plans, dated January 8, 2019
 - a. Zoning
 - b. Trail Easement
 - c. Sewer and Row Easement
6. Floor plans and elevations, dated January 8, 2019
 - a. Floor Plan – Parking Level
 - b. Floor Plan – Courtyard Level
 - c. Floor Plan – Upper Level
 - d. Floor Plan – Roof Plan
 - e. North Elevation
 - f. East Elevation
 - g. Section A-A: Courtyard Looking North / Section B-B: Courtyard Looking East

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7. Landscape Plan, dated January 18, 2019
8. Critical Area Report and Update of Previous Geotechnical Engineering Study, Geotech Consultants, Inc., dated October 17, 2018
9. Traffic Impact Analysis, Heath & Associates, Inc., dated October 2018
10. Certificate of Concurrency, dated February 7, 2019
11. Habitat Management Plan, dated February 5, 2018
12. Environmental (SEPA) Checklist, dated February 28, 2018
13. Applicant's response to SVAR criteria, undated
14. Relative Elevations Along Madison Ave S., received March 16, 2018
15. Proposed building illustration, undated
16. Proposed building illustration, undated
17. Design Review Board Design Guideline Checklist, undated
18. Design Review Board Special Meeting Minutes, dated April 23, 2018, and sign-in sheet
19. Email from David Freeburg to Shannon Glass, dated July 11, 2018, with email string
20. Planning Commission Regular Meeting and Public Hearing Minutes (DRAFT), dated January 24, 2019
21. Memo from Assistant Chief Luke Carpenter, Fire Marshal, Olivia Sontag, dated March 19, 2018
22. Comments from Building Official, dated January 17, 2019
23. Memorandum from Peter Corelis, P.E. Development Engineer, to Olivia Sontag, dated February 7, 2019
24. Email from Peter Corelis to Olivia Sontag, dated February 7, 2019, with email string and attachments
25. Notice of Intent to Reduce the Minimum Buffer in a Landslide Hazard Area, dated January 11, 2019
26. Mailing list, dated January 11, 2019; Legal Invoice, *Bainbridge Island Review*, # BBIR840565, dated January 11, 2019; Affidavit of Publication, *Bainbridge Island Review*, dated January 11, 2019; Classified proof, published January 11, 2019
27. Email from John Kist to PCD, dated January 20, 2019; Email from Charles Schmid to Olivia Sontag, dated February 1, 2019
28. Notice of Mitigated Determination of Nonsignificance (MDNS), issued January 29, 2019
29. City PowerPoint (10 slides)
30. Email from Robert Pratt to Olivia Sontag, dated February 11, 2019, with email string and attached document
31. Certificate of Posting, dated June 7, 2018
32. Master Land Use Application, dated November 11, 2017
33. Parcel map, printed February 14, 2019, with four (4) building photos, undated

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

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FINDINGS

Application, Notice, and Public Comment

1. Cihan Anisoglu, on behalf of CKCB Madison Avenue Development, LLC (Applicant), requests approval of a site plan, design review, and a Shoreline Substantial Development Permit (SSDP) to develop a courtyard-style, 10-unit residential building made up of two townhomes, with two elevator/stair towers, and 8 one-bedroom apartments. The property is located between 220 and 270 Madison Avenue South, adjacent to Eagle Harbor to the east.¹ The Applicant also requests approval of a Shoreline Variance (SVAR) to construct the two elevator/stair towers an additional five feet in height above the height limit otherwise applicable to the proposed development at this location. *Exhibit 1, Staff Report, page 1; Exhibits 5 through 7; Exhibit 11; Exhibit 32.*
2. City staff determined that the application was complete on March 28, 2018. The City published a revised Notice of Application/Hearing/SEPA Comment Period in the *Bainbridge Island Review* on June 8, 2018, with a comment deadline of July 9, 2018.² The Applicant posted notice on the site. City Planner Olivia Sontag testified that notice was properly posted, mailed, and published in accord with city ordinances.

The City received several agency responses to the notice document. The Bainbridge Island Fire Department requested that the project both comply with the adopted Fire Code and provide the required water flow and fire sprinklers. The City's Department of Public Works Development Engineer submitted comments about the need for International Building Code compliance, disability access, a soils report, and an evaluation of the flood hazard area. Comments were also received from the public. The comments focused on the proposed SVAR and the potential for loss of views, as well as the need for a connection to the Winslow Waterfront Trail and for tree protection. Additional comments concerning the building height and sewer main easement were received between July 14, 2018, and February 6, 2019.

In its staff report, City staff responded to the public comments, noting that: (1) the City is not making a recommendation on the SVAR height increase request, (2) several city documents support and require the installation of a connection to the Waterfront Trail, and (3) an arborist would recommend ways to minimize impacts to off-site trees. *Exhibit 1, Staff Report, pages 8 through 10; Exhibit 2; Exhibit 4; Exhibit 21; Exhibit 22; Exhibit 23; Exhibit 31; Testimony of Ms. Sontag.*

¹ The property is identified by tax parcel number 262502-30078-2006. *Exhibit 1, Staff Report, page 1.*

² A revised notice was issued because some properties were inadvertently omitted from the original notice of April 6, 2018. *Exhibit 1, Staff Report, page 7; Exhibit 2.*

State Environmental Policy Act Review

3. The City acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City consolidated the application and SEPA comment periods under the Optional DNS process provided for by the Washington Administrative Code (WAC) 197-11-355, with a comment deadline of May 8, 2018. Notice materials stated that the City expected to issue a Determination of Nonsignificance (DNS) for the proposal. The Applicant's Environmental Checklist listed robins and crows as observed or known to be on or near the site. No threatened or endangered species are known to be on or near the site. No critical areas were identified on the property.

The City reviewed the Applicant's Environmental Checklist and other information on file and determined that, with mitigation, the proposal would not have a probable significant adverse impact on the environment. The City's Responsible SEPA official issued a Mitigated Determination of Nonsignificance (MDNS) on January 29, 2019, with an appeal deadline of February 12, 2019. The MDNS contains four conditions that require marking the limits of clearing and grading in the field, providing for dust management, providing for a certified arborist to protect off-site trees, and providing wayfinding signage for the Waterfront Trail. The MDNS was not appealed. *Exhibit 1, Staff Report, pages 7 and 8; Exhibit 2; Exhibit 13; Exhibit 28.*

Comprehensive Plan & Zoning Requirements

4. The Applicant's Environmental Checklist identified the Comprehensive Plan designation of the property as Mixed Use Town Center. The Mixed Use Town Center (MUTC) is intended to have a strong residential component to encourage a lively community during the day and at night. According to the Comprehensive Plan, the high residential density of Winslow requires that the Central Core Overlay District provide services and products that meet the needs of residents as well as visitors. *City Comprehensive Plan, page LU-31.* City staff identified Guiding Principle #1 (to preserve the special character of the Island) and Guiding Principle #4 (to consider the costs and benefits to residents and property owners in making land use decisions.) as relevant to the proposed development.³ Ms. Sontag testified that the City determined that the proposed project would meet the

³ In addition to the Guiding Principles, City staff specifically identified the following goals of the Comprehensive Plan as relevant to the proposal: Island-Wild Conservation and Development Strategy Goal LU-4; Designated Centers Goal LU-5, Policy LU 6.2; Winslow Town Center Goal LU-7, Policy LU 7.3; Development in Designated Centers Goal EC-6, Policy EC 11.2; Geologically Hazardous Areas Goal EN-8, Policy EN 8.1, EN10.2; Policies WR 2.3 and 2.13; Surface Water Protection and Management Goal WR-3, Policy WR 3.2, WR 3.3; Policy HO 3.1 and HO4.1; Multimodal Goal TR-1, Policy TR1.1; Non-Motorized System Goal TR-2, Policy TR 2.2, TR 2.4, TR 2.6, TR 2.11, TR 8.4, TR10.1; Policy U 12.2; Storm and Surface Water Goal U-13, Policy U 13.2, U 13.5, U 14.5, and U 14.8. *Exhibit 1, Staff Report, pages 5 through 7.*

guiding principles, goals, and policies of the Comprehensive Plan. *Exhibit 1, Staff Report, pages 3, 5, and 6; Exhibit 12; Testimony of Ms. Sontag.*

5. The 18,112 square foot (0.39-acre) lot is within the Mixed Use Town Center – Central Core Overlay (MUTC-CORE) zoning district under the City code. The purpose of the MUTC zoning district is to implement the Mixed Use Town Center sections of the comprehensive plan. The MUTC zone includes five overlay districts that allow for diverse types of housing, shopping, civic facilities, recreation, and employment. The mix of land uses is intended to promote a pedestrian atmosphere, enhance the viability of the town center, and allow for development in a manner that is harmonious with the scale of the town center. Land uses that require outdoor storage or that have an auto orientation, such as drive-through establishments, are not permitted within the Mixed Use Town Center. The central core overlay district is the most intense district within the Mixed Use Town Center. Within this overlay district, residential uses are encouraged, but exclusive office and/or retail uses are permitted. *BIMC 18.06.030.A, -A.1. Exhibit 1, Staff Report, pages 1 and 14.*
6. Multi-family development is a permitted use within the MUTC-CORE zone. *BIMC Table 18.09.020.* Lot coverage allowed in the MUTC-CORE zone is 100 percent, minus any required setbacks. Front yard setback requirements in this zone are 10 feet minimum and 20 feet maximum from the Madison Avenue South sidewalk. There are no rear or side yard setback requirements. A residential floor area ratio (FAR) limit of 0.4 is allowed with a bonus of 1.0 FAR. Building height is a maximum of 35 feet in the MUTC-CORE zone and a maximum of 30 feet within the shoreline area that is governed by the City's Shoreline Master Program. The Applicant proposes 46 percent lot coverage, meeting the front yard setback requirement of 10 feet from the Madison Avenue South sidewalk (except for an on-street disabled access parking space), a rear setback of 40 feet, and side yard setbacks of 4.5 feet to the north and 11 feet to the south. The Applicant also requests a FAR bonus of 0.75, for a total floor area of 13,573 square feet. *BIMC Table 18.12.020-3. Exhibit 1, Staff Report, page 15.*
7. The City code contains development standards and guidelines for the proposed development, including a requirement of 30 trees per acre (*BIMC 18.15.010*); on-street, off-street, and disabled access parking (*BIMC 18.15.020*); parking for one bicycle space per five parking spaces (*BIMC 18.15.030*); outdoor lighting (*BIMC 18.15.040*); and sign permits (*BIMC 18.15.050*). The Applicant would provide 14 new trees, one on-street disabled access parking space, and a parking garage under the building with a total of 13 off-street parking spaces. The parking garage would include four bicycle spaces. No outdoor lighting or signs are proposed. *Exhibit 1, Staff Report, pages 15 and 16.*

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Critical Areas Requirements

8. The proposed development is within a geologically hazardous area, which qualifies as a critical area under the City's Critical Areas Ordinance. The purpose of the Critical Areas Ordinance, Chapter 16.20 BIMC, is to designate and classify ecologically sensitive and hazardous areas in order to protect, maintain, and restore such areas; achieve no net loss of the functions and values of the areas; and allow for reasonable use of property. The ordinance requires that a critical area report be prepared prior to development of the undeveloped site. The Applicant submitted a Critical Area Report (CAR) and update of a previous Geotechnical Engineering Study, prepared by Geotech Consultants, Inc., dated October 17, 2018. The report reveals that a majority of the property slopes gently toward the east from Madison Avenue South and is covered with tall grass, weeds, and scattered trees. A steep slope approximately 15 feet high exists along the eastern edge of the site extending down to a small tidal inlet of Eagle Harbor. The slope is overgrown with blackberries, other underbrush, and a few medium-sized trees. The CAR determined that the "oversteepened conditions" on-site appear to be caused by previous erosion from past uncontrolled discharge from a large storm drain outfall in the northeastern portion of the lot. Rock armoring has been placed at the base of the steep slope. The CAR determined that the steep slope meets the criteria for a landslide hazard area and an erosion hazard area that requires a 50-foot buffer. The CAR recommends erosion control measures to address the erosion hazard area and a recommendation of a building setback of at least 25 feet from the crest of the steep slope. The CAR also determined that the proposed development would not create a net increase in geologic instability, would not increase the risk of life safety or property loss above acceptable levels, would be constructed using appropriate engineering methods, and would not further degrade the geologic functions of the associated critical areas.

The City determined that the property should be considered a marine bluff, having slopes greater than 40 percent that exceed a vertical height of 10 feet. According to City staff, minor development for public access, such as a public trail may be allowed on the face of the marine bluff or buffer. *Exhibit 1, Staff Report, page 14; Exhibit 8; Exhibit 25.*

9. The City requested a slope stability analysis from the Applicant for a 1-in-2,475 year earthquake, also known as the Maximum Considered Earthquake (MCE). Geotech Consultants, Inc., provided a rerun of slope stability analyses and determined that the foundations of the new building would be supported on dense to very dense glacial till, which would protect the structure from any shallow failures during static or seismic events, even during an MCE event. *Exhibit 24.*
10. The two-story building, with underground parking, would be constructed on the western two-thirds of the property, which is flag-shaped with a narrow strip extending to the south. The building would extend no further east than an existing sanitary sewer line.

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The Applicant's Environmental Checklist estimates an excavation area of 10,000 square feet and the removal of approximately 800 cubic yards. *Exhibit 8; Exhibit 11; Exhibit 12.*

11. The City issued a Notice of Intent to Reduce the Minimum Buffer in a Landslide Hazard Area on January 11, 2019, with a comment deadline of February 4, 2019. The Applicant proposes to reduce a required 50-foot buffer, plus a 15-foot building setback, to a 10-foot buffer, with a 15-foot building setback, the minimum allowed by BIMC 16.12.060.K.5.c.i.(A). At the hearing, City Development Engineer Peter Corelis testified that he approved the buffer reduction. *Exhibit 25; Testimony of Mr. Corelis.*

Site Plan and Design Review

12. The City Design Review Board held a special meeting on April 23, 2018, to review the site plan and design. It recommended approval, with specific conditions. City staff also reviewed the application and determined that, as conditioned, the proposal would comply with the City's Site Plan and Design Review criteria. In addition, the City Engineer determined that the site plan and design would meet specific design requirements by tying into an existing outfall, for direct discharge of stormwater to Eagle Harbor, if connecting to a Madison Avenue South storm drain is not feasible; by aligning streets and pedestrian ways with existing streets; by obtaining a Certificate of Concurrency for traffic; by providing a Waterfront Trail connection; by obtaining a non-binding commitment for water and sewer system capacity; and by conforming to the City's design and construction standards. *BIMC 2.16.040. Exhibit 1, Staff Report, pages 17 through 19; Exhibit 17; Exhibit 18.*
13. The condition related to the Waterfront Trail comes from the City's Island-Wide Transportation Plan, which includes a goal of construction of a segment of the Waterfront Trail along the eastern portion of the property as far south along the panhandle as possible. The southern 50 feet of the panhandle is partially over the water and a trail cannot feasibly be constructed. The City offered the Applicant a FAR bonus if he provides public amenities, including an elevated boardwalk that would complete the remaining 50 feet of trail on a 20-foot easement provided to the City. The Applicant indicated he would accept this offer and complete the trail amenity, if feasible, given the topography of the site. Feasibility will be determined prior to issuance of a building permit. *Exhibit 1, Staff Report, page 10; Exhibit 5.*
14. Health & Associates, Inc., prepared a Traffic Impact Analysis (TIA) for the Applicant, dated October 2018. The project would be located on the east side of Madison Avenue South. Madison Avenue South is a north/south, two-lane collector south of Winslow Way and a two-to-three-lane secondary arterial to the north. Winslow Way is an east/west two-lane collector with local access west of Madison Avenue South and a two-lane secondary arterial to the east. The TIA determined that the project would generate

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five new peak-hour AM trips and 6 new peak-hour PM trips. No need for mitigation was identified in the report. *Exhibit C-9*.

Shoreline Management Act Requirements

15. The State Shoreline Management Act (SMA) and the City of Bainbridge Island Shoreline Master Program (SMP) govern work within 200 feet of the Lake Washington ordinary high water mark. *City of Bainbridge Island SMP, Chapters 20.60 through 20.67 MMC; MMC 20.60.050; RCW 90.58.030(2)(f)*. The proposed project is located entirely within the shoreline jurisdiction and adjacent to a marine bluff and geologically hazardous area. Any “substantial development” within the shoreline requires approval of a shoreline substantial development permit (SSDP). *Substantial development* is any development in which the total cost or fair market value exceeds \$7,047, or any development that materially interferes with the normal public use of the water or shorelines of the state. *RCW 90.58.030(3)(e). Exhibit 1, Staff Report, pages 1, 2, and 19.*

Shoreline Substantial Development Permit

16. The City’s Shoreline Master Program (SMP) establishes regulations, enforcement procedures, and policies for protection and development of Bainbridge Island’s shoreline areas. The regulations in the SMP state specific legal requirements that future development must follow. The regulations in the SMP are part of the City’s development regulations. The policies in the SMP state the underlying objectives the regulations are intended to accomplish. The policies are a component of the City’s Comprehensive Plan and guide the interpretation and enforcement of the Shoreline Master Program’s regulations. The policies are not regulations in themselves and, therefore, do not impose requirements beyond those set forth in the regulations.⁴ *SMP, Sec. 1.1, page 8.*
17. The City’s SMP Program is intended to implement the Shoreline Management Act of 1971 (Chapter 90.58 RCW) by:

- 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;
- 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;
- Ensuring, at minimum, no net loss of shoreline ecological functions and ecosystem-wide processes;

⁴ City staff did not identify any SMP goals or policies as relevant to the proposed project. *Exhibit 1, Staff Report, page 19.*

- 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;
- Adhering to and fostering the policies of the Act contained in RCW 90.58.020 for shorelines of the state; and
- Improving the water quality of the Puget Sound.

SMP, Sec. 1.1.1, page 8.

18. The City SMP designates the property as an Urban shoreline environment. The purpose of the Urban shoreline environment is to provide for high-intensity, water-oriented commercial, transportation, industrial, mixed-use, multi-family residential, public access and recreational uses while protecting existing natural resources, ecological functions and ecosystem-wide processes, and restoring ecological functions in areas that have been previously degraded. *SMP, Sec. 3.2.1.1, page 23.* At the same time, under the Urban management policies, priority should be given to the following uses, in order of preference: water-dependent, water-related, and water-enjoyment uses. Uses that derive minimal benefit from a water location should be discouraged or prohibited. According to the SMP, nonwater-oriented uses should be allowed only if the use is otherwise compatible with the purpose of the Urban designation and the setting, the use does not displace water-dependent uses, and the use results in no net loss of ecological functions and ecosystem-wide processes. *SMP, Sec. 3.2.1.3.1, page 23.* Multi-family residential is a permitted use with the Urban shoreline environment. *SMP, Table 4-1, page 41.*
19. BGE Environmental, LLC, prepared a Habitat Management Plan (HMP) for the Applicant, dated February 5, 2018, to meet the requirements of BIMC 16.12.030.B.3. The HMP describes mitigation sequencing for the project to minimize damage to the ecology and environments. The HMP includes a vegetation management plan, performance standards, construction and specifications, monitoring, maintenance, and contingency. The City determined that the proposed project would meet the no net loss standard of Section 4.0 of the SMP and the environmental impact mitigation sequencing of Sec. 4.1.2. The City identified the need for additional SMP review if the Applicant chooses to install a boardwalk to complete the remaining 50 feet of the Waterfront Trail. No other past or future SSDP requests for like action in the area were identified. *Exhibit 1, Staff Report, page 19.*

Shoreline Variance

20. The purpose of a shoreline variance permit is strictly limited to granting relief to specific bulk, dimensional, or performance standards identified in the SMP, where there are extraordinary or unique circumstances relating to the property and the strict implementation of the SMP would impose unnecessary hardships on the Applicant or

thwart the Shoreline Management Act policies as stated in RCW 90.58.020. *BIMC 2.16.165.G.1.*

21. Within the MUTC-CORE zone, building heights are limited to a maximum of 35 feet, with a bonus to 45 feet, with parking under the building. *BIMC Table 18.12.020-3.* The SMP, however, establishes a 30-foot building height limit in the Urban shoreline environment. *SMP, Table 4-1, page 50.* The Applicant requests a Shoreline Variance to allow the construction of two stair/elevator towers to 35 feet to allow access to a private rooftop deck for the two townhouse units. *Exhibit 1, Staff Report, page 21.*
22. The City Planning Commission held a public meeting and public hearing to review the Applicant's development proposal on January 24, 2019. The Planning Commission unanimously passed a motion to recommend approval of the project, subject to amendments for Conditions 3, 19, 27, and 44. The Planning Commission also recommended that the SVAR be denied because SVAR criteria 1, 2, and 6 have not been met. *Exhibit 1, Staff Report, pages 19 and 20; Exhibit 20.*

Hearing Testimony

23. City staff presented information during the open record hearing. City Planner Olivia Sontag testified about her review of the proposal, referencing a PowerPoint presentation (Exhibit 29) delivered during the open record hearing. She referenced photos and a map in the PowerPoint presentation that depicted a six-foot-wide Waterfront Trail connecting path along the full width of the property on the water front side with a 20-foot-wide easement centered on the trail. She testified that the City had determined that the southern 50 feet of trail on the property need not be completed by the Applicant because of the topography in that area. City Development Engineer Peter Corelis testified that the southern 50 feet of trail would likely be improved with public funds at some time in the future.

Ms. Sontag also testified that the City received no appeal of the MDNS. She testified that the City has approved a new Critical Areas Ordinance, but it has not yet been approved by the Department of Ecology for adoption into the City's SMP. She reviewed the Applicant's request for a Shoreline Variance in the staff report, noting that a maximum building height of 45 feet is allowed in the MUTC-CORE zone, but 30 feet in the Urban shoreline environment. *Exhibit 29; Testimony of Ms. Sontag; Testimony of Mr. Corelis.*

24. Several residents in the area testified at the open record hearing. John Kist is a resident in the area. He submitted written comments on the application and testified in opposition to the SVAR. He stated that the extra five feet in height would have a significant adverse impact, including a loss of as much as 30 feet of view scope from his property. Christopher Brookes submitted written comments on the application and testified that the existing SMP height limit should not be modified because it now protects others with

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views. He also expressed concern about a 40-foot oak tree, which has a root structure within the project property. David Schmid, Chair of the Waterfront Trail Committee, submitted comments on the application. He also testified that he agrees with the City's decision to require the Applicant to provide the 50-foot trail easement dedicated to the City to construct the southern portion of the trail at a later time. David and Frances Korten, owner-residents of a Seabreeze Condominium overlooking the proposed development, submitted written comments on the application and testified in opposition to the SVAR. Mrs. Korten expressed approval for the overall development, but noted that the Planning Commission's recommendation that the SVAR be denied should be followed. Mr. Korten expressed concern about modifying height regulations that others have come to rely upon to protect their own property rights and interests. Robert Pratt submitted comments on the application and testified that he owns property downslope from the proposed project. Because of the slope along the property, Mr. Pratt suggested an approach that would end the Waterfront Trail connection further north with a stairs east and a waterfront boardwalk connecting to the existing trail to the south. *Exhibit C-4; Testimony of Mr. Kist, Mr. Brookes, Mr. Schmid, Mr. and Mrs. Korten, and Mr. Pratt.*

25. Cihan Anisoglu, representing CKCB Madison Avenue Development, LLC, testified in response to concerns about the Waterfront Trail and the SVAR. He testified that the construction of the Waterfront Trail through the property takes away backyard use for building occupants. Therefore, he proposed a rooftop deck to allow for some recreational use. He suggested that the fact there is a shoreline variance process in the SMP suggests it should be available for situations like the one he faces for development of his property. He testified directly about how his proposal would meet the SVAR criteria. He stated that reasonable use of property should include private space such as on a rooftop deck; that the topography of the site and requirement of a trail is a hardship that has a negative impact on his use of the property; that the design of the project is compatible with other authorized uses in the area; that the SVAR would not be a grant of special privileges because other projects in the area have a higher height limit as shown in Exhibit 33; that the proposed stair towers cannot be any lower due to handicap access requirements; and that the public interest of Seabreeze condo owners would not negatively impacted because, if a building were constructed on a neighboring property, it would block views of the proposed building from the Seabreeze building. He disagreed with the Planning Commission's recommendation to deny the SVAR, and requested that the SVAR be approved. *Testimony of Mr. Anisoglu.*

Staff Recommendation

26. City staff recommended that, with conditions, the Site Plan and Design Review and SSDP be approved. City staff did not make a recommendation on the SVAR. Mr. Anisoglu testified that the Applicant agrees with the proposed conditions recommended by the City. *Exhibit 1, Staff Report, page 22; Testimony of Mr. Anisoglu.*

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CONCLUSIONS

Jurisdiction

The City Administrator is authorized to issue a SSDP. *BIMC 2.16.165.F.3*. The Hearing Examiner is authorized to issue a SVAR. *BIMC 2.16.165.G.3.b*. If requested by the Applicant, a site plan and design review application that is part of a proposal requiring multiple land use permits may be combined in a consolidated project review. Related applications requiring a public hearing must be considered at one public hearing in accordance with *BIMC 2.16.170*. *BIMC 2.16.040.D.5.a*. The applications have been consolidated for review before the Hearing Examiner. *BIMC 2.16.170*. Decisions are needed for the applications for site plan review, design review, shoreline substantial development approval, and shoreline variance approval. The City Council has established criteria for review of each of these applications, which the Hearing Examiner must follow when deciding whether to approve a specific application.

Criteria for Review

Site Plan and Design Review

Approval of site plan and design review applications, under *BIMC 2.16.040.E*, may only be approved if there is compliance with the following eleven criteria:

1. The site plan and design is in conformance with applicable code provisions and development standards of the applicable zoning district, unless a standard has been modified as a housing design demonstration project pursuant to *BIMC 2.16.020.S*;
2. The locations of the buildings and structures, open spaces, landscaping, pedestrian, bicycle and vehicular circulation systems are adequate, safe, efficient and in conformance with the Island-Wide Transportation Plan;
3. The Kitsap County health district has determined that the site plan and design meets the following decision criteria:
 - a. The proposal conforms to current standards regarding domestic water supply and sewage disposal; or if the proposal is not to be served by public sewers, then the lot has sufficient area and soil, topographic and drainage characteristics to permit an on-site sewage disposal system.
 - b. If the health district recommends approval of the application with respect to those items in subsection E.3.a of this section, the health district shall so advise the director.
 - c. If the health district recommends disapproval of the application, it shall provide a written explanation to the director.
4. The city engineer has determined that the site plan and design meets the following decision criteria:
 - a. The site plan and design conforms to regulations concerning drainage in Chapters 15.20 and 15.21 *BIMC*; and

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- b. The site plan and design will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and
 - c. The streets and pedestrian ways as proposed align with and are otherwise coordinated with streets serving adjacent properties; and
 - d. The streets and pedestrian ways as proposed are adequate to accommodate anticipated traffic; and
 - e. If the site will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the site, and the applicable service(s) can be made available at the site; and
 - f. The site plan and design conforms to the “City of Bainbridge Island Design and Construction Standards,” unless the city engineer has approved a variation to the road standards in that document based on his or her determination that the variation meets the purposes of BIMC Title 18.
5. The site plan and design is consistent with all applicable design guidelines in BIMC Title 18, unless strict adherence to a guideline has been modified as a housing design demonstration project pursuant to BIMC 2.16.020.S;
 6. No harmful or unhealthful conditions are likely to result from the proposed site plan;
 7. The site plan and design is in conformance with the comprehensive plan and other applicable adopted community plans;
 8. Any property subject to site plan and design review that contains a critical area or buffer, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter;
 9. Any property subject to site plan and design review that is within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter;
 10. If the Applicant is providing privately owned open space and is requesting credit against dedications for park and recreation facilities required by BIMC 17.20.020.C, the requirements of BIMC 17.20.020.D have been met;
 11. The site plan and design has been prepared consistent with the purpose of the site design review process and open space goals.

Shoreline Management Act

The Shoreline Management Act is codified in Chapter 90.58 RCW. Applicable policies of the SMA identified in RCW 90.58.020 include those to foster “all reasonable and appropriate uses” of private property; to protect against adverse effects to the public health, the land and its vegetation, and wildlife; and to give priority to single-family residences and appurtenant structures in authorizing alterations to the natural condition of the shoreline. Court decisions applying the SMA state that “private property rights are ‘secondary to the SMA’s primary purpose, which is to protect the state shorelines as fully as possible.’” *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 49 (2009) (internal quotation marks omitted) (quoting

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Lund v. Dep't of Ecology, 93 Wn. App. 329, 336-37 (1998)). 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*. See *Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 203 (1994).

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 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)*.

Shoreline Management Act Regulations

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-27 WAC establishes permitting procedures and permit criteria. The Hearing Examiner reviews the shoreline applications under the following criteria:

The Hearing Examiner must determine there is compliance with the following criteria in the WAC before he can approve a shoreline substantial development permit:

- (1) A substantial development permit shall be granted only when the development proposed is consistent with:
 - (a) The policies and procedures of the act;
 - (b) The provisions of this regulation; and
 - (c) The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.
- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-150.

The criteria in the WAC require that the Hearing Examiner consider the City’s Shoreline Master Program applicable to the proposed development, as discussed below.

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Shoreline Substantial Development Permit

A substantial development permit may only be approved by the Hearing Examiner when the development proposed is consistent with the following:

- A. The applicable policies, guidelines, and regulations of the policies, guidelines and regulations of the Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended; and WAC 173- 26 and WAC 173-27 or their successor;
- B. The goals, policies, objectives and regulations of the city of Bainbridge Island shoreline master program;
- C. The city of Bainbridge Island comprehensive plan and municipal code; all other applicable law; and any related documents and approvals.

BIMC 2.16.165.F.3.b.i.

Consideration must also be given to whether the cumulative impact of additional past and future requests that reasonably may be made in accordance with the Comprehensive Plan, or with similar planning document, for like actions in the area, will result in substantial adverse effects on the shoreline environment and shoreline resources.

BIMC 2.16.165.F.3.b.ii.

Shoreline Variance

The criteria below found in WAC 173-27-210 and in BIMC 2.16.165.G.4 are the minimum criteria for review and approval of a SVAR by the Hearing Examiner. A SVAR for development that will be located landward of the ordinary high water mark may be authorized only if the Applicant can demonstrate all of the following:

- 1. 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;
- 2. The hardship described in (a) of this subsection 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;
- 3. 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;
- 4. The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area
- 5. The variance requested is the minimum necessary to afford relief; and
- 6. The public interest will suffer no substantial detrimental effect.

BIMC 2.16.165.G.4; See WAC 173-27-170.

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The City's SMP also provides that:

In the granting of all shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the total of the shoreline variances should also remain consistent with the policies of RCW 90.58 or its successor and should not produce substantial adverse effects to the shoreline environment. *BIMC 2.16.165.G.4.c.*

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 City 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

Site Plan and Design

- 1. With conditions, the site plan and design review application meets the criteria for approval.** The site plan and design is in conformance with applicable code provisions and development standards of the MUTC-CORE zoning district. The locations of the buildings and structures, open spaces, landscaping, pedestrian, bicycle, and vehicular circulation systems would be adequate, safe, efficient, and in conformance with the Island-Wide Transportation Plan. Mr. Pratt submitted an alternative design for the construction of the Waterfront Trail in front of the property (Exhibit 30). Condition 19 has been amended to require the City to consider this proposal in the final design and construction of the Waterfront Trail on the property. The City issued a non-binding commitment for water and sewer availability with a binding commitment letter required prior to building permit issuance. In addition, the City Engineer determined that the site plan and design would meet specific requirements by tying into an existing outfall, for direct discharge of stormwater to Eagle Harbor, if connecting to a Madison Avenue South storm drain is not feasible; by aligning streets and pedestrian ways with existing streets; by obtaining a Certificate of Concurrency for traffic; by providing a Waterfront Trail; by obtaining a non-binding commitment for water and sewer system capacity; and by conforming to the City's Design and Construction standards.

The City's Design Review Board reviewed the design guidelines in Title 18 BIMC and recommended approval with conditions and additional review prior to issuance of a building permit. No harmful or unhealthful conditions are likely to result from the proposed site plan. The City reviewed the project and issued an MDNS, with conditions. The MDNS was not appealed. The site plan and design is in conformance with the comprehensive plan and other applicable adopted community plans. The Applicant has met the requirements of the City's critical areas ordinance, as well as the SMP's critical

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areas regulations in BIMC 16.12.060. City Development Engineer Peter Corelis approved a reduction of the minimum buffer in a landslide hazard area from 50 feet, plus a 15-foot building setback, to 10 feet, with a 15-foot building setback. The development would conform to the requirements for a shoreline substantial development permit in the City's SMP, as detailed below. *Findings 1-19, 23-26.*

Shoreline Substantial Development Permit

2. **With conditions, the proposal is consistent with the policies of the Shoreline Management Act.** Applicable policies of the Shoreline Management Act (SMA) include those that 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.*

The City gave reasonable notice and opportunity to comment on the proposal. There was no public opposition to the SSDP. Multi-family residential is a permitted use within the Urban shoreline environment. Conditions are necessary, including requiring compliance with the SEPA mitigation conditions and ensuring the Applicant adheres to the conditions requested by the building official, the fire district, and public works. In addition, conditions are necessary to mitigate shoreline and critical areas impacts, restore or replant disturbed areas, plant required trees, and comply with arborist recommendations on how to minimize impacts to the root systems of off-site trees. In addition, the City should provide ongoing consultation to appropriately complete the link to the Waterfront Trail to the point feasible, including review of the stairs and boardwalk proposal in Exhibit 30 and other possible means to best complete the trail or otherwise provide a public amenity along the property. *Findings 1-11, 13-19, 23-26.*

3. **With conditions, the proposal is consistent with applicable shoreline regulations.** The proposed development is reviewed for compliance with the criteria established in WAC 173-27-150. These criteria are intended to implement the policies of the SMA, which requires that all shoreline projects be consistent with an approved local Shoreline Master Program. As noted above in Conclusion 2, conditions are necessary to ensure compliance with the SMP and to provide mitigation for adverse impacts within the shoreline jurisdiction. *Findings 1-11, 13-19, 23-26.*
4. **With conditions, the proposal is consistent with the City Shoreline Master Program, as well as the Comprehensive Plan and Zoning Regulations, to the extent that they are consistent with the Shoreline Master Program.** The proposal would be consistent with the Comprehensive Plan goals and policies for the Mixed Use Town Center and the zoning code classification of Mixed Use Town Center – CORE. The Comprehensive

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Plan encourages the type of use proposed, including an increase in the variety of housing types and choices suitable to a range of household sizes and incomes in a way that is compatible with the character of existing neighborhoods. The proposed development would meet City code requirements for density, setbacks, and building coverage. The City analyzed the potential environmental impact of the proposal; determined that the current proposal, with conditions, would not have a probable significant adverse impact on the environment; and issued a MDNS.

The proposed multi-family housing project would take place within the shoreline jurisdiction in an Urban upland shoreline designation. The Applicant's proposal would not require shoreline stabilization and would provide a pedestrian trail for public access along the shoreline and shoreline viewing, and Low Impact Development techniques would be incorporated into the site to the maximum extent feasible. The Applicant submitted a Habitat Management Plan, which documents the required mitigation sequencing, and the City determined that there would be no net loss of shoreline values. No other past or future SSDP requests for like action in the area were identified, other than possible future work on the Waterfront Trail. As noted above in Conclusion 2, conditions are necessary to ensure compliance with the SMP and to provide mitigation for impacts within the shoreline jurisdiction. *Findings 1-11, 13-19, 23-26.*

Shoreline Variance

5. **The Applicant has not met the criteria for approval of a shoreline variance.** At time of the open record hearing, no one other than the Applicant expressed support for approval of a height variance for the proposed development, which would require a Shoreline Variance (SVAR). The City Planning Commission recommended that the SVAR be denied because, in its view, SVAR decision Criteria 1, 2, and 6 had not been met. City staff made no recommendation on the SVAR, which is unusual because City staff typically looks for ways to recommend approval of an application. The members of the public who testified at the open record hearing all expressed opposition to the SVAR, although most supported the proposed development without the SVAR.

The Hearing Examiner agrees with the assessment of the Planning Commission, which concluded that Applicant does not meet the criteria for approval. Criterion 1 requires the Applicant to demonstrate that the strict application of the bulk, dimensional, or performance standards in the applicable master program creates a hardship that precludes, or significantly interferes with, reasonable use of the property. Criterion 2 requires that the hardship be specifically related to the property and be 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. Criterion 6 requires that Applicant show that the public interest will suffer no substantial detrimental effect if the SVAR is approved.

The Applicant's request for a SVAR is to allow construction of two elevator/stair towers to access the building roof; it is his position that 35 feet of height is needed to allow the towers. The Applicant's starting position is that rooftop access is necessary. He argues that use of the roof for recreation should be allowed because there is not enough space on the property to otherwise allow access to an outdoor environment. The Applicant expressed his intent to allow for trees, tables, and other amenities on the roof. He argued that the proposed use of the roof is reasonable, because other properties have access to outdoor use of residential property. He also expressed his opinion that a SVAR should be allowed, or there would be no reason to incorporate a variance process into the Shoreline Master Program.

The arguments of the Applicant miss the mark and are not responsive to the criteria required to be met in order to obtain approval of a SVAR. A SVAR is to be "strictly limited" to allow "reasonable use" of property only where "there are extraordinary or unique circumstances relating to the property" that would impose "unnecessary hardships" on the Applicant. In addition, an applicant must demonstrate there would be no substantial detrimental impact on the public if a variance is granted. Here, the Applicant is able to make reasonable use of his property by constructing two townhouses and eight apartments. Although access to a rooftop can be a desirable amenity, it is not necessary for there to be reasonable use of the property. The Applicant will be able to attain economic return on development of his property without rooftop access. The fact that there may be no outdoor recreation use for some living in the proposed development is not due to any unique feature of the property, but is because of the design of the building chosen by the Applicant. The building could have a small footprint, or could have less height and be developed on the property without the need for a SVAR. Finally, the testimony of the public and the recommendation of the Planning Commission point to the potential negative impact, or detriment to, the public if the rooftop access is allowed. Not all residential structures have rooftop access and there is potential for spill over noise, light, and view impacts if they do. Although the current municipal code does not appear to regulate the use of residential rooftops for recreation purposes, it may be time for the City to consider regulations or restrictions as more developers desire to provide this feature. As to this application, because the Applicant has not demonstrated he meets the criteria for approval of a SVAR, the SVAR must be denied. *Findings 1-11, 20-26.*

DECISION

Based upon the preceding findings and conclusions:

The request for a Shoreline Variance to construct the two elevator/stair towers an additional five feet in height is **DENIED**.

The request for a site plan, design review, and a Shoreline Substantial Development Permit to develop a courtyard-style, 10-unit residential building, made up of two townhomes, with two

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elevator/stair towers; 8 one-bedroom apartments; and other improvements, between 220 and 270 Madison Avenue South, is **APPROVED**, with the following conditions:⁵

SEPA Conditions:

1. The limits of clearing and grading shall be clearly marked in the field and inspected by the Department of Planning and Community Development staff prior to start of any clearing, grading, or other site work.
2. Dust shall be managed in compliance with WAC 173-400 and Puget Sound Clean Air Agency –Regulation I, 9.15 (PSCCA Reg). “It shall be unlawful for any person to cause or allow visible emission of fugitive dust . . .” – PSCCA Reg, 9.15(a). The project proponent or contractor shall prepare and implement a “Dust Control Plan” in conformance with Department of Ecology Publication 96-433. Prior to any site activity, the “Dust Control Plan” shall be submitted to the City and it shall be actively managed for the duration of the project. Unlawful emissions (see below) shall be corrected immediately and/or dust generating operations ceased until additional or alternate BMPs can be implemented to maintain emissions below allowable levels. "Fugitive dust" means a particulate (especially soil/dirt) emission made airborne by forces of nature, man's activity, or both, that leaves the subject site. Unlawful emissions shall generally be defined as emissions leaving the subject property that are visible to an untrained observer. Where continuous monitoring equipment is used particulate matter concentrations shall be monitored for 10µm particle (PM10) size. The 24-hr average PM10 emissions shall not exceed a concentration equivalent to the EPA Air Quality Index (AQI) of 50 (54µg/m³) and any instantaneous PM10 emissions shall not exceed a concentration equivalent to an AQI of 100 (154µg/m³).
3. Prior to building permit issuance, an arborist shall provide recommendations on how to minimize impacts to the root systems of off-site trees, particularly the large tree on the southwest corner of the property to the north. The recommendations shall be implemented to the extent feasible. The arborist shall be on-site when earthwork commences to assess and make adjustments to the tree protection recommendations as necessary.
4. Prior to the certificate of occupancy, the Applicant shall provide wayfinding signage for the Waterfront Trail, as approved by the City.

⁵ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by City code.

Project Conditions:

5. Except for modifications reflecting compliance with these conditions of approval, the project shall be in substantial conformance with the site plans dated January 18, 2019.
6. Prior to construction activity, the Applicant shall obtain the appropriate permits from the City of Bainbridge Island, including but not limited to clearing, grading, right-of-way, and building permits.
7. All work shall adhere to the City's seasonal work limitations between October 1 and April 30 of any year. During this period, no soils shall remain exposed and unworked for more than two days. From May 1 to September 30, no soils shall remain exposed and unworked for more than seven days.
8. Prior to any construction, a temporary erosion and sedimentation control plan (TESCP) shall be submitted and approved by the City. Construction shall be restricted to the dates occurring between May 1 and September 30 unless a wet weather erosion control plan is submitted and approved by the City prior to construction.
9. All construction activities shall comply with noise limitations per BIMC 16.16.020.
10. 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 Department of Archaeology and Historic Preservation shall be immediately notified. Construction shall only continue thereafter in compliance with the applicable provisions of law.
11. Prior to building permit issuance, the Design Review Board (DRB) shall review and approve the proposed building materials and the landscape plan.
12. The Applicant is requesting a Floor Area Ratio (FAR) bonus. Prior to building permit issuance, the Applicant shall acquire the FAR bonus pursuant to BIMC 18.12.030.E. Additional permitting or City review may be required dependent on the FAR bonus provision the Applicant selects.
13. The project shall comply with the provisions of the 2015 International Codes as currently adopted by the City of Bainbridge Island per the Chapter 15.04 BIMC and shall include any State of Washington Amendments.
14. The project shall comply with the provisions of the 2015 International building Code, Chapter 11 and ANSI 117.1-2009 for disabled access compliance, including a minimum of one (1) van accessible disabled access parking space.

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15. A soils report is required for this project which shall address soils conditions and all foundation and building design criteria per the International Building Code and State of WA Code Amendments. The Soils and Structural Engineer shall coordinate design criteria for all structures for submittal and submit a complete design analysis and recommendations at time of plans examination.
16. To the satisfaction of the Bainbridge Island Fire Department, the proposed project shall comply with all applicable provisions of the adopted Fire Code.
17. Fire flow is required for this project. Fire flow shall be not less than 1500 gpm as provided by the City of Bainbridge Island.
18. Fire sprinklers are required for this project.
17. The City engineer has approved a deviation to the standard road section for an urban collector roadway per DCSS drawing DWG 7-030 requiring a planter strip adjacent to the back of curb and a minimum 5-foot-wide sidewalk. The deviation reverses the location of the planter strip and sidewalk so that the planter strip is between the sidewalk and the proposed structure to be consistent with the existing Madison Avenue layout.
18. Prior to the certificate of occupancy, right-of-way (ROW) dedication is required along the full lot frontage of the property from the existing ROW/property line to the back of the furthest portion of sidewalk resulting from the construction of on-street parallel parking stalls, or 5 feet, whichever is greater.
19. Development of the site will require non-motorized improvements as shown on the Non-Motorized Transportation Plan Map D: Winslow System Plan (Minimum Standards) in the adopted Island Wide Transportation Plan. Prior to the certificate of occupancy, the 6-foot-wide Waterfront Trail connecting path per the City of Bainbridge Island Design and Construction Standards and Specifications (DCSS) standard drawing DWG 8-360 shall be constructed along the water front side of the project for the full width of the lot to the southernmost portion of the flag as terrain and trees allow. A 20-foot-wide public trail easement shall be granted to the City for the full width of the lot, centered on the trail construction, to the extent feasible. Any boardwalk proposed in lieu of the standard connecting pathway shall not be placed over the existing sewer line or easement. The City shall review the stairs and boardwalk proposal identified in Exhibit 30 to determine if that proposal would be feasible for implementation.
20. The easement serving the sewer main through the parcel is a substandard width of 5 feet. The City's standard utility easement width is 20 feet. The Applicant shall dedicate an additional 15 feet of sewer easement on the eastern side of the existing easement (waterward and away from the buildings), and provide a total minimum width of 15 feet

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along the southern lot line to provide adequate setback from the edge of the sewer main to the proposed structure foundation walls (stairwell structure) and superstructure to avoid disturbance during construction.

21. The 20-foot sanitary sewer main easement shall remain wholly unobstructed for purposes of access, maintenance, repairs, replacement, etc. No permanent structures or trash enclosures that would interfere with the City's easement rights shall be constructed over the easement. Prior to building permit issuance, building roof eaves, overhangs, footings, etc. that encroach into the easement shall be evaluated so as not to impact the ability to operate heavy construction equipment, including excavators, lifts, backhoes, etc. The Applicant shall submit section drawings with the building permit application showing any encroachments into the easement for evaluation by the City.
22. With the submittal of the building permit, the Applicant shall provide Step Forms 1 & 2: Construction in a Geologically Hazardous Area.
23. Prior to the certificate of occupancy for the structure, the Applicant shall provide the City with Step Form 3: Certification for Final Inspection.
24. An indemnification or hold harmless agreement is required for all projects in geologically hazardous areas and buffers. The form of the agreement shall be approved by the City, executed prior to the commencement of construction or site alteration, and recorded with the County Auditor through a notice on title, or other similar document subject to the approval of the Administrator.
25. With the submittal of the building permit, the Applicant shall demonstrate how storm water will be handled in conformance with current BIMC 15.20 regulations. An outfall for a direct discharge of stormwater to Eagle Harbor is allowed where no other alternative exists. The project should attempt to connect to the existing Multiple Separate Storm Sewer System (MS4) in Madison Avenue or to the 24" culvert located to the northeast where feasible to avoid further shoreline impacts.
26. Low impact development methods for stormwater management shall be incorporated into the site to the maximum extent feasible.
27. Prior to building permit issuance, a binding commitment letter for water and sewer availability is required.
28. A traffic impact analysis was completed for the site per Chapters 15.32 and 15.40 BIMC to evaluate for concurrency. Based on the results of the traffic impact analysis completed by Heath & Associates in October 2018, a certificate of concurrency was issued per

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BIMC 15.32.060. Any proposed intensity of use at the site may require analysis and a new evaluation for concurrency.

29. Work within shoreline jurisdiction shall be completed in substantial compliance with the no net loss documentation completed by BGE Environmental in February 2018, except to comply with these conditions.
30. No construction activities or staging is permitted within the shoreline buffer or geologically hazardous area and buffer.
31. Per SMP Section 4.1.4.4., disturbed areas will be restored or replanted as required.
32. New vegetation planted in the shoreline buffer shall be native species using a native plant community approach of multi-storied, diverse plant species that are native to the Central Puget Lowland marine riparian zone. The plant schedule in the no net loss documentation completed by BGE Environmental in February 2018 proposes appropriately sized and spaced native or native equivalent vegetation.
33. Prior to the certificate of occupancy, the Applicant/property owner shall provide assurance to the satisfaction of the Administrator that the mitigation area will be maintained in perpetuity. The assurance can be in the form of notice on title, conservation easement, or similar mechanism as approved by the City Attorney.
34. The proposed 10-foot vegetation buffer along the top of the slope was designed in the no net loss documentation completed by BGE Environmental in February 2018, prior to the incorporation of the Waterfront Trail on the site plan. If the 6-foot-wide trail displaces any area of the proposed 10-foot vegetation buffer, an equal area of the displaced vegetation buffer shall be planted on either side of the 6-foot trail. Prior to building permit issuance, the Applicant shall submit a revised planting plan incorporating the trail and revising any displaced areas affected by the trail.
35. Prior to the certificate of occupancy, the required tree units and the 10-foot vegetation buffer shall be planted or a performance assurance shall be accepted by the City.
36. As proposed in the no net loss documentation completed by BGE Environmental in February 2018, the monitoring, maintenance, and contingency plan for the mitigation areas shall be implemented in accordance with SMP Section 4.1.2.8. The monitoring plan may require periodic maintenance measures if tree survival, plant survival, invasive plan recolonization, or irrigation is does not meet the thresholds outlined in the plan. To ensure the success of the required mitigation, monitoring shall occur for a minimum duration of five (5) years from the date of the completed planting. The duration of

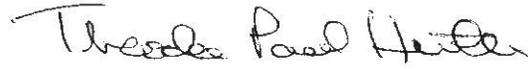
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monitoring may be extended if the project performance standards set forth in the approved mitigation plan fail to be accomplished.

37. Per BIMC 18.15.010.H.3, performance assurance is required to assure the City that the required tree units and 10-foot vegetation buffer are properly installed and will become established and be adequately maintained. Prior to the certificate of occupancy the required landscaping shall be installed. A Washington landscape architect, Washington certified nursery professional, or Washington certified landscaper shall submit a landscaping declaration to the director to verify installation in accordance with the approved plans. The time limit for compliance may be extended to allow installation of landscaping during the next appropriate planting season as approved if the director determines that a performance assurance device, for a period of not more than one (1) year, will adequately protect the interests of the City. The performance assurance device shall be for 150 percent of the cost of the work or improvements covered by the assurance device. In no case may the property owner delay performance for more than one (1) year. Once the planting is completed, landscape declaration is submitted, and a maintenance and monitoring assurance is accepted, the performance assurance shall be released.
38. Per BIMC 18.15.010.H.4, the property owner shall replace any unhealthy or dead plant materials in conformance with the approved landscape plan and vegetation management plan. A maintenance assurance device shall be required for a period of five (5) years after acceptance by the City of the new planting of vegetation to ensure proper installation, establishment, and maintenance. The maintenance assurance device amount shall not be less than 20 percent of the cost of replacing materials covered by the assurance device. The maintenance surety shall be refunded to the Applicant upon completion of the five (5) year monitoring period and submittal of final compliance documentation as outlined in the no net loss documentation completed by BGE Environmental in February 2018, minus any funds needed for the City to perform corrective actions or perform monitoring.
39. Temporary or permanent irrigation within new planting areas that do not have high soil moisture conditions is required in accordance with BIMC 18.15.010.I. This shall not apply where provisions of Chapter 16.12 or 16.20 BIMC or any state or federal law restricts irrigation.
40. As proposed, 14 new trees are required to meet the tree unit requirement. Existing trees within shoreline buffers and/or critical areas and their buffers and do not count towards

the tree unit requirements. Trees planted to meet tree retention requirements shall be planted in accordance with the planting requirements of BIMC 18.15.010.H and the landscape plan dated January 18, 2019.

Decided this 27th day of February, 2019.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center