

June 20, 2013

**CITY OF BAINBRIDGE ISLAND, WASHINGTON  
HEARING EXAMINER**

**REPORT AND DECISION**

**Project:** Engle Shoreline Conditional Use Permit

**File number:** SCUP17545

**Applicant:** Charlene Engle  
10468 NE Yaquina Avenue  
Bainbridge Island, WA 98110

**Request:** After-the-fact approval for the construction of a 70 linear feet, 14 foot high shotcrete retaining wall and a curtain drain.

**Location:** 10468 NE Yaquina Avenue

**Environmental  
Review:**

The project is subject to State Environmental Policy Act (SEPA) review as provided in Washington Administrative Code (WAC 197-11-310). Utilizing the optional DNS process provided in WAC 197-11-355, the City of Bainbridge Island published a combined Notice of Application / SEPA comment period on August 24, 2012. The 30-day comment period ended on September 24, 2012. In conjunction with the Notice of Decision on this application, the City, acting as lead agency, issued a Mitigated Determination of Non-significance (MDNS) threshold determination for this proposal on May 25, 2013 with the appeal period ending on June 7, 2013.

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**FINDINGS OF FACT**

**A. Site Characteristics**

1. Property Information:
  - a. Tax Lot Number: 4169-000-016-0704
  - b. Owner of record: Charlene Engle

- c. Lot size: .41 acres
  - d. Land use: Single-family Residential
2. Site Development: The upland is developed with a single family residence, detached garage, an access driveway and a drain field. The single family residence has existed in its location for almost 100 years, having been built in 1914 according to the assessor's office.

The driveway is located off of Yaquina Drive and is perpendicular to the top of the scarp. The site is developed with a driveway, garage, single family residence and a septic system. The sand filter portion of the on-site septic system is also located parallel to the top of the scarp. The single family home is approximately 22 feet and the garage is approximately 26 feet from the top of the scarp (Exhibit 2).
  3. Terrain: Gently sloping on the western portion and moderate to steeply sloping, with active landsliding, on the eastern portion. The total steep slope area extends approximately 140 east from the headscarp and is bounded on the east by Puget Sound.
  4. Nearshore Ecosystem: The subject property is located within the Murden Cove Management Area within reach 3164 (*Bainbridge Island Nearshore Assessment Habitat Characterization and Assessment, Management Strategy Prioritization, and Monitoring Recommendations, November 2004*). The geomorphic class has been identified as high bluff with feeder bluff activity.
  5. Access: The property is accessed directly by land from the terminus of Yaquina Avenue, and from Puget Sound over water.
  6. Public Services: Emergency services are provided by the City of Bainbridge Island Police Department and Bainbridge Island Fire District.
  7. Subject Property - Zoning / Comprehensive Plan Designation:

The property is zoned R-2. The Comprehensive Plan designation is OSR-2, and the property is located within the upland Semi-Rural shoreline environment and the Aquatic environment.
  8. Surrounding Properties - Zoning / Comprehensive Plan Designation:

The surrounding properties also border Puget Sound and are zoned the same as the applicant parcel: R-2, with a Comprehensive Plan designation of OSR-2. The surrounding properties abutting the water are located in the upland Semi-Rural shoreline environment.
  9. Surrounding Property Uses:

The properties to the north, south and west are developed with single family residences. To the east is Puget Sound.

## **B. Site and Procedural History**

10. The eastern portion of the site has historically experienced episodic landsliding with significant renewed landslide activity occurring in December, 2010. Due to the recent landslides the upper portions of the slope retreated further upland toward the existing single family residence, drainfield and access driveway. The access driveway and drainfield have been relocated several times in response to the bluff retreat.

11. Efforts have been made to stabilize the slope in the past, including the installation of

various drainage improvements along the southern edge of the slope, erosion control matting (jute) along portions of the slope face, and structural curbing along the edges of the driveway. Despite these efforts, bluff retreat has continued to occur and threatens the driveway and drainfield.

12. In anticipation of the 2011-12 winter storm season, the applicant obtained an emergency exemption on October 10, 2011 (Exhibit 6) to construct an anchored shotcrete wall, which was installed during January and February 2012 (Exhibits 2 & 8). Geotechnical monitoring during installation was provided by Aspect Consulting. A letter certifying that all the work had been accomplished in accordance with the approved design and drawings was issued by Joseph M. Lucia of Lucia Engineering on May 14, 2012 (Exhibit 8).

13. An application for a shoreline conditional use permit (SCUP) was submitted on December 7, 2011 (Exhibit 1). The application was not deemed complete until July 13, 2012, when the fee for the required third party review of the geotechnical report was submitted. The geotechnical report 3<sup>rd</sup> party review was completed on August 6, 2012 (Exhibit 11). The application notice was issued on August 24, 2012, with the comment period ending on September 24, 2012 (Exhibit 12). No public or agency comments were received during the comment period.

14. Under the Shoreline Management Act the repair or construction of shore armoring necessary to protect a single family residence are exempt from the requirement to obtain a shoreline substantial development permit but must in all respects conform to shoreline regulations and policies (see BIMC 16.12.040.A and 16.12.310.A). BIMC 16.12.310.B(1) specifies that bulkheads and revetments are permitted uses in the Semi-Rural shoreline environment if similar structures already exist "within approximately 100 feet on either side of the property;" otherwise they require issuance of a SCUP. The record is unclear whether the 100-foot approximate proximity standard could be met for the Engle application, but its somewhat isolated location at the end of Yaquina Road tends to suggest that it could not.

15. Staff contends that the reason why a SCUP is required is that a shotcrete wall does not meet the definition of either a bulkhead or revetment and thus must be reviewed pursuant to BIMC 16.12.380.C(2) as a use unlisted under the City's master program. While a shotcrete wall is clearly not a bulkhead, the term "revetment," which applies generally to armoring structures placed on a slope's surface, should be broad enough to include the Engle wall if it lies close enough to the water to be subject to wave action during storm events. The distinction between SCUP review of a shotcrete wall as a revetment not permitted outright under the approximate proximity standard and review as an unlisted use can carry potential consequences. In the latter case the applicant must also demonstrate "that extraordinary circumstances preclude reasonable economic use of the property in a manner consistent with the policies of RCW 90.58.020, or its successor, that the proposed use would not produce significant adverse effects on the shoreline environment." This additional standard could impose a serious barrier to permit approval if the City were ever required to take it seriously.

### **C. Shoreline Conditional Use Permit**

16. BIMC 16.12.380.C(1) states the basic criteria for issuance of a shoreline conditional use permit:

1. *Uses classified as conditional uses may be authorized provided that the applicant*

can demonstrate all of the following:

- a. *The proposed use will be consistent with the policies of RCW 90.58.020 or its successor and the policies of the Master Program.* Discussion of the applicable Shoreline Master Program policies can be found in the Planning Department's staff report, which is incorporated herein by reference. Based on the information submitted and the conditions applied, the retaining wall is consistent with the policies of the Master Program. The wall protects the residence and its utilities from landslide risk and the curtain drain routes water away from the slope. The facility design is the minimum necessary to achieve these objectives and is appropriately responsive to site constraints.
- b. *The proposed use will not interfere with the normal public use of the public shorelines.* As designed and constructed, the public use of the shoreline will not be altered. The shotcrete retaining wall is not located on the shore itself, nor is this section of shoreline public. The retaining wall may be seen from the shore, but it should have minimal visual impacts because it is located about 90 feet up the hillside and will be replanted to camouflage the rock wall face.
- c. *The proposed use of the site and design of the project will be compatible with other permitted uses within the area.* The site comprises a single family residential use in a residential zone. The wall will allow this permitted use to be maintained. The nearshore environment will be protected from the risk that a destabilized septic system might collapse into the water.
- d. *The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is located.* As conditioned and mitigated, no significant adverse environmental impacts have been identified as resulting from this proposal. The project has been conditioned to revegetate areas below the wall exposed by the project construction process.
- e. *The public interest suffers no substantial detrimental effect. [WAC 173-14-140(1) or its successor].* The public interest will not incur a substantial detrimental effect from stabilizing this site. The altered appearance of the shoreline bank will be mitigated through revegetation with native overhanging plants where disturbance has occurred (Condition # 2).
- f. *The proposed use is consistent with the provisions of the Zoning Ordinance (BIMC Title 18) and the Comprehensive Plan (Ordinance 94-21).* Retaining walls outside of zoning setbacks are permitted at a height up to 25 feet in this zoning district. The Comprehensive Plan does not address this use specifically; however the preservation of an existing single family home is consistent with the Comprehensive Plan. Specific regulatory requirements are discussed below:

*Geologically Hazardous Areas, BIMC 16.20.150*

The project is located on slopes that are considered geologically hazardous under the Bainbridge Island Municipal Code. The applicant has provided required engineered construction plans and a geotechnical report by Aspect Consulting & Lucia Engineering (Exhibit 5). The plans and geotechnical report have been reviewed by the City's Development Engineer and undergone third party review. The proposal has been determined to be safe; the risk to adjacent properties from the geological hazard has not been increased as a result of development.

An indemnification agreement is required for all projects in a geologically

hazardous area. The project must demonstrate compliance with this requirement within 30 days of approval of the SCUP (Condition # 6).

Private utilities are allowed in a geologically hazardous area, subject to determinations of safety and feasibility . The report prepared by the geotechnical engineer recommended that a groundwater curtain drain be constructed with an outfall to the beach.

*Dimensional Standards, BIMC 18.12.020*

The proposed retaining wall will not exceed the height limitation for the zone. The proposed upper walls are no more than 14 feet above the existing grade and the lower walls are 5 feet above grade.

17. Staff has concluded that the proposed retaining wall is not a use listed under the City's master program and thus is subject to the additional requirements of BIMC 16.12.380.C(2) quoted above. Staff determined that the applicant has demonstrated the existence of extraordinary circumstances in that the drainfield is located very close to the top of the slope, as is the driveway. There is no available room outside the mandated well radius to relocate the drainfield, nor the option to relocate the driveway. Earlier efforts in 2008 to reorient the sand filter and driveway in response to landslide activity did not provide a permanent solution to the ongoing landslide risks (Exhibit 9).

18. Installation of the shotcrete retaining wall protects the residence and its appurtenances. Without the wall, the septic system remained at risk of sliding into the Sound. By securing the hillside the wall prevents a potential source of point pollution from impacting Puget Sound.

## **CONCLUSIONS**

1. The Hearing Examiner has jurisdiction over this shoreline permit application proceeding. Applicable notice and SEPA requirements have been met.
2. The proposed use is consistent with the policies of RCW 90.58.020 and the City's Shorelines Master Program. As conditioned, the proposal meets the requirements of BIMC 16.12.380 and WAC Chapter 173-27 for issuance of a shoreline conditional use permit.
3. The proposed use will not interfere with normal public use of the shorelines and will be compatible with other permitted uses in the areas. It will cause no long-term or significant adverse effects to the shoreline environment nor impose a detrimental effect on the public interest. The proposal is consistent with the City's zoning ordinance and Comprehensive Plan.

## **DECISION**

The Shoreline Conditional Use Permit application of Charlene Engle (file no. SCUP17545) is APPROVED, subject to the following conditions:

**SEPA Conditions:**

1. To mitigate aesthetic impacts and to enhance the shoreline environment, disturbed areas shall be replanted with native or other approved plant species.
2. A replanting plan shall be submitted to the city within 30 days of the approval of this conditional use permit.
3. The planting plan shall include a planting schedule and a three year maintenance program, along with the type, quantity and plant species.
4. A landscape maintenance assurity in conformance with the municipal code shall be provided.
5. An annual assessment of the replanting plan shall be submitted for the next three years. Any diseased or dying vegetation recommended for replacement shall be replaced.

**Project Condition:** .....

6. An indemnification/hold harmless agreement in accordance with BIMC 16.20.080(C)(g) shall be recorded within 30 days of approval.

ORDERED June 20, 2013.



Stafford L. Smith, Hearing Examiner  
City of Bainbridge Island

The decision of the City issued by the Hearing Examiner may be appealed to the Shorelines Hearings Board in accordance with the provisions of BIMC 16.12.380(C)(7).

(Please note: Washington Department of Ecology has final decision authority for a Shoreline Conditional Use application. Within eight days of the City's decision on the application, the application packet is forwarded to the Department of Ecology. The Department of Ecology shall approve, approve with conditions, or deny the application within 30 days.)

The exhibit list prepared by the Clerk of the Hearing Examiner's Office is attached.

**EXHIBIT LIST**

**ENGLE SCUP17545**  
**Owner: Charlene Engle**

**10468 Yaquina Avenue**  
**Tax Parcel Number: 4169-000-016-0704**

Staff Contact:  
Heather Beckmann, Associate Planner

Public Hearing: 06/13/2013 at 9:00 am  
Location: City of Bainbridge Island  
City Hall Council Chamber

Hearing Examiner:  
Stafford Smith

<b>EXHIBIT NO.</b>	<b>DOCUMENT DESCRIPTION</b>	<b>DATE</b>	<b>NO. OF PAGES</b>
1	Application	12/07/2011 (Received)	11
2	Site Plans	12/07/2011 (Received)	7
3	Aspect Letter Recommending Expedited Permitting and Construction (dated 09/13/2011); and Aspect Letter Re Review of Structural Plans (dated 10/4/2011)	12/07/2011 (Received)	2
4	Lucia Engineering Inc. Shotcrete Retaining Wall Design	12/07/2011 (Received)	16
5	Joint Aquatic Resources Permit Application (Dated 10/26/11)	12/07/2011 (Received)	14
6	COBI Emergency Exemption From Shoreline Management Act Substantial Development Permit Requirement (Dated 10/10/11)	12/07/2011 (Received)	2
7	Environmental (SEPA) Checklist (Completed by Applicant and COBI staff)	12/07/2011 (Received)	17
8	Letter from Lucia Engineering Inc. certifying completion of work.	05/14/2012 (Dated)	1
9	Aspect Slope Stabilization Study (Revised) (Prepared 4/27/11 and Revised 5/7/12)	05/16/2012 (Received)	103
10	COBI Engineer Notice to Proceed	07/13/2012 (Dated)	3
11	AMEX Geotechnical Review	08/03/2012 (Dated)	3
12	Notice of Application and Affidavit of Mailing and Posting	08/24/2012 (Publication Date)	
13	Notice of Public Hearing and Certification of Distribution and Posting	05/24/2013 (Publication Date)	
14	Staff Report	05/25/2013 (Dated)	
15	PowerPoint Presentation	06/13/2013	9