

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

**REPORT AND DECISION**

- Project:** COBI Open Water Marina Shoreline Substantial Development/Shoreline Conditional Use Permit
- File Number:** SSDP/SCUP17091
- Applicant:** Tami Allen, Harbor Master  
City of Bainbridge Island  
625 Winslow Way East  
Bainbridge Island, WA 98110
- Request:** The City of Bainbridge Island has applied to establish an open water moorage and anchorage area (open water marina) in Eagle Harbor. It is proposed that another 20 mooring buoys be added to the existing linear moorage. These mooring buoys would be used to tie 10 boats, fore and aft. With the existing 10 slips on the linear moorage system and four independent buoys, the total number of moorage slips within the open water marina would be 24. As part of the Shoreline Conditional Use Permit, the City is requesting that up to 100% of the slips be available for residential use by live-aboard vessels. Any mooring slips not leased by a live-aboard vessel would be available for transient visitors. All new mooring buoys will be anchored to a helical anchor embedded in the seabed.
- Location:** Eagle Harbor, just south of the public park and dock.
- Environmental Review:** A Mitigated Determination of Non-significance (MDNS), in accordance with the State Environmental Policy Act (SEPA) was issued on October 6, 2011; no appeals were filed (Exhibit #18).
- Public Hearing:** November 18, 2011

## FINDINGS OF FACT

### Site Characteristics

1. Assessor's Record Information:
  - a. Owners of record Washington State Department of Natural Resources
  - b. Site size The City of Bainbridge Island lease area is 15.61 acres
  - d. Land use Submerged bedlands
2. TERRAIN:  
Bedlands of Eagle Harbor
3. SOILS:  
Fine sand and silt substrate.
4. SITE DEVELOPMENT:  
Eagle Harbor is developed with a Washington State Ferry landing, ferry maintenance yard/docks, multiple private marinas, docks and private mooring. The lease area is currently developed with a linear moorage system that accommodates 10 vessels and four independent buoys.
5. ACCESS:  
Access to the open water marina will only be by boat as there will be no structural connection from the marina to shore. The public boat launch and dock will provide the closest public access to the water and marina.
6. PUBLIC UTILITIES:
  - a. Water – No public water service will be provided
  - b. Sewer – Public Sewer pump-out is available at the public dock. In accordance with the City's Moorage Rental Agreement, vessels will be required to pump sewage out on a weekly basis and provide documentation thereof (Exhibit #11).
7. PUBLIC SERVICES:
  - a. Police - Bainbridge Island Police Department.
  - b. Fire - Bainbridge Island Fire District.
  - c. Schools - Bainbridge Island School District.
8. EXISTING USE  
Transient moorage on linear moorage and independent buoys
9. SURROUNDING USES: Since the lease area is in the middle of the harbor the immediate surrounding use is limited to navigation of state waters. Along the shoreline there are multiple uses including the public park, the ferry maintenance yard, single-family residences, and commercial and multi-family units.

10. EXISTING ZONING/SHORELINE MASTER PROGRAM DESIGNATION:  
The lease area is entirely within Eagle Harbor; therefore the Shoreline Master Program is the governing regulation. The City Shoreline Master Program designates the lease area as Aquatic Environment.
11. SURROUNDING ZONING/SHORELINE MASTER PROGRAM DESIGNATION:  
The waters surrounding the lease area are designated as Aquatic Environment.

#### Procedural History

12. In October of 2007 the Bainbridge Island City Council adopted Ordinance 2007-16 amending its Shoreline Master Program to allow the establishment of an open water moorage and anchorage area within Eagle Harbor. In October of 2007, the City of Bainbridge Island submitted a limited amendment to its Shoreline Master Program to the Department of Ecology to implement the provisions of Ordinance 2007-16. The limited amendment was approved by the Department of Ecology on November 25, 2009 (Exhibit #2 )
13. Over the next several years, the City negotiated with the Department of Natural Resources regarding the location and configuration of an open water moorage and anchorage area in Eagle Harbor. A lease with DNR is required because the open water moorage and anchorage area is located over DNR owned bedlands.
14. On December 3, 2010, the City submitted a letter to the Department of Natural Resources, asking the DNR to support the City's submittal of a Shoreline Substantial Development Conditional Use permit (SSDP/CUP), that would establish an open water marina in Eagle Harbor and allow up to 100% residential use of the slips in the marina. (Exhibit #3). On December 8, 2010, the Department of Natural Resources responded to the City with a letter expressing support for the SSDP/CUP (Exhibit #4). On December 20, 2010, DNR entered into a lease with the City. (Exhibit #5 ).
15. On June 10, 2011 the applicant applied for Shoreline Conditional Use/Shoreline Substantial Development Permit application (Exhibit #7). A complete application notification letter was sent July 8, 2011 (Exhibit #21). A Notice of Application was sent to property owners within 300 feet and appropriate agencies and published in the paper of record July 15, 2011 (Exhibit #17). Several public comments were received (Exhibits #22, 23 & 24).
16. A Mitigated Determination of Non-significance (MDNS) was issued on October 6, 2011 and was sent to all SEPA agencies and those who commented on the notice of application (Exhibit #18). No appeals of the MDNS were filed.

17. A public hearing on the combined Shorelines Substantial Development Permit and Shoreline Conditional Use applications was held by the City of Bainbridge Island Hearing Examiner on November 18, 2011. Harbor Master Tami Allen testified on behalf of the applicant. City staff was represented by Joshua Machen, Current Planning Manager. City resident Ed Kushner offered public testimony in support of the applications and commented on their lengthy history.

Compliance with Bainbridge Island Shoreline Management Master Program (SMMP) Policies

18. *Section III C, Environmental Impacts:* The use of the open water marina by live-aboard and recreational vessels has the potential to create adverse environmental impacts. In addition to the standard state laws regarding disposal of sewage and gray water into the waters of the state, the City of Bainbridge Island Moorage Rental Agreement contains a list of best management practices that will ensure the protection of the environment. Specifically, there are guidelines for handling bilge water, fueling, gray water, hazardous chemicals/cleaners and waste, waste oil, spill prevention and response, boat repair activity, and boat cleaning. In addition the live-aboard rental agreement has a detailed sewage management plan (Exhibit #11).
19. *Section III H, Shorelines of State-wide Significance:* The proposed open water marina is located within waters of state-wide significance. In designating an open water marina the City has worked in close consultation with state agencies to ensure state interests are being met. The open water marina will help to maintain Eagle Harbor's maritime heritage and character. The precautions taken to protect and preserve the environment will help minimize damage to the ecology and environment of the shoreline.
20. *Section IV G, Aquatic Environment:* The proposed location of the open water marina and design of the buoys are consistent with the policies of the Aquatic Environment. Specifically, the buoy anchoring systems are water-dependent and are designed to have minimal impact to the bedlands and environment. The open water marina has been proposed in a location that allows navigation through the harbor on both the north and on the south, thereby minimizing interference with surface navigation.
21. *Section V D, Boating Facilities:* The proposed open water marina is considered a boating facility under the City of Bainbridge Island Shoreline Master Program. The proposed open water marina is designed and will be operated to provide the maximum feasible protection of the Aquatic Environment. Only floating buoys will be used to secure the boats, and no piers or ramps will connect the marina to the shoreline. The buoys will be secured using embedment-style anchors that have minimal impact on the bedland substrate. The proposed mooring will occur in water deep enough that the shadows from the boats will have minimal effect on

macro algae growth, thus avoiding impacts to benthic vegetation. While the proposed marina is located in the center of Eagle Harbor, the community has become accustomed to the maritime appearance of having boats moored in the harbor, minimizing new aesthetic impacts.

The Shoreline Master Program policies mandate that the marina should not unduly restrict or impair the navigation or use of the water. As designed, the proposed location of the open water marina allows ample room for navigation through Eagle Harbor, both north and south of the proposed open water marina.

#### Compliance with Bainbridge Island Shoreline Master Program Regulations

22. *16.12.070 Environmental impacts:* The proposed open water marina consists of the use of the existing linear moorage, the four existing independent buoys and the addition of 20 new mooring buoys. The physical impact on the water and the bedlands is minimal since the buoys are located in water deep enough to avoid shadow impacts on macro algae growth. The buoys will be secured to the bedlands using an embedment-style anchor that has a very small footprint and results in minimal disturbance.

Environmentally responsible use of the marina will be assured through stringent regulations and regular monitoring of potential contaminants. Each live-aboard vessel mooring within the marina is required to comply with a moorage rental agreement that contains rules governing bilge water management, fueling practices, gray water, hazardous chemicals/cleaners, waste, waste oil, spill prevention and response, boat repair activity, and boat cleaning. In addition, the live-aboard rental agreement has a detailed sewage management plan (Exhibit #11).

23. *16.12.180 Boating Facilities:* The proposed open water moorage and anchorage area (open water marina) is considered a boating facility and is explicitly permitted in the Aquatic Environment where it is proposed. Specific provisions of the Master Program allow the proposed open water moorage and anchorage area to be located waterward of the construction limit line. The open water marina is proposed to be available to up to 100% of live-aboards. However, it's anticipated that live-aboard tenancy will be limited; any slips not leased for residential use will be made available to transient visitors. The open water marina will simply provide a location to moor boats, with the associated public park and dock containing all of the needed facilities to support the marina, including bathrooms, pump-out facilities, garbage dumpster and adequate parking.

Washington Administrative Code Section 332-30-171(2)(a) provides that the total number of slips which may be allocated for residential use in any marina, open water moorage and anchoring area, or other moorage facility is limited to ten percent (10%) of the total number of slips available in the marina. However, Washington Administrative Code Section 332-30-171(2)(c.) authorizes the limit

on residential (live-aboard) vessels within a marina to be changed by a local jurisdiction through amendments to the local Shoreline Master Program and/or issuance of a shoreline conditional use permit. The City of Bainbridge Island's Shoreline Master Program, adopted November 26, 1996, allows a total of 25% of slips in a marina to be occupied by live-aboard vessels.

In October 2007, the City Council passed Ordinance 2007-16, which added a definition for an "Open Water Moorage and Anchorage Area" to the City's Shoreline Master Program; added open water marinas to the existing SMP definition of "Marina and Boating Facilities"; allowed one open water moorage and anchorage area to be permitted in the Eagle Harbor Aquatic Environment; and limited live-aboard vessels to a designated open water moorage area. This limited amendment to the City's Master Program was approved by the Department of Ecology on November 25, 2009 and provides the basis for evaluating any future proposal for an open water marina area under the Shoreline Substantial Development Permit and Shoreline Conditional Use processes.

On December 3, 2010, after lengthy negotiations with the Department of Natural Resources regarding lease terms for the establishment of an open water moorage and anchorage area in Eagle Harbor, the City submitted a letter to DNR requesting that the Department support the City's submittal of a Shoreline Substantial Development Conditional Use permit (SSD/CUP) to establish an open water marina in Eagle Harbor and allow up to 100% residential use of the slips in the marina. The purpose of amending the ratio of allowable live-aboard vessels was to create flexibility and support housing diversity, accommodating the live-aboard residents currently using the harbor.

On December 8, 2010, the Department of Natural Resources responded to the City with a letter expressing support for the SSDCUP and stating that the DNR was ready to enter into a lease with the City, provided that the future issuance of the SSDP/CUP was included as a condition of the lease. (Exhibit #4). Within this same timeframe, the City consulted with the Department of Ecology regarding the submittal of the SSD/CUP and received support from Ecology. On December 20, 2010, DNR entered into a lease with the City. (Exhibit #5). The lease includes provisions regarding the proposed use, term of use, rent, improvements and required environmental protections, as well as provisions for subletting.

24. *16.12. 360 General Permit Requirements:* All applicable regulatory provisions were considered in the staff review and its resultant recommendations. This is a unique proposal: it is the only open water live-aboard marina facility that will be permitted on the island and benefits from its close proximity to the city park and the downtown businesses needed to support a live-aboard community. Since this is an isolated case, it is unlikely that the actions will result in cumulative impacts. Providing a specific place within Eagle Harbor for the live-aboard vessels to moor will ensure that sewage disposal and other potential impacts are closely

monitored. This will offer greater protection than existed in the past when the live-aboard community was moored throughout the harbor without the benefit of specific regulations or oversight.

25. *16.12.380 Shoreline Conditional Uses:* The standards for issuance of a shoreline conditional use permit are stated below, along with responsive findings for each requirement.

*Conditional Uses*

*Uses classified as conditional uses may be authorized provided that the applicant can demonstrate all of the following:*

- (1) *The proposed use will be consistent with the policies of RCW 90.58.020 or its successor and the policies of the Master Program.*

As discussed above, the open water marina is consistent with all policies of the Master Program except the stated limitation on the percentage of potential live-aboard vessels, which percentage in turn is allowed to be increased through the issuance of a shoreline conditional use permit.

- (2) *The proposed use will not interfere with the normal public use of the public shorelines.*

The proposed open water marina allows the City to continue its historic practice of accommodating live-aboard vessels within Eagle Harbor. The live-aboard community brings diversity to Bainbridge Island. The proposed location of the marina will not interfere with navigation in the bay, as there are navigation lanes on both the north and south of the lease area. Indeed, focusing the live-aboard community into a single moorage area arguably improves navigational patterns overall. Historically Eagle Harbor has valued the aesthetic appeal of boats being moored in a working harbor. The open water marina will help to maintain the harbor's traditional maritime look and feel. Finally, the proposed configuration enables the boats to be moored in the same general location without requiring them to share mooring buoys.

- (3) *The proposed use of the site and design of the project will be compatible with other permitted uses within the area.*

The proposed location of the open water marina is adjacent to and incorporates the existing linear moorage system that the City installed several years ago. The location allows for clear navigation both up the harbor both on the north and on the south.

- (4) *The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is located.*

The proposed open water marina will use both the existing linear moorage system already in place and will place up to 20 new buoys to create an additional 10 mooring locations. The location of the proposed buoys is in sufficiently deep water as to not have a shadow effect from the buoys or the boats moored to them. All the proposed buoys will be installed using an embedment-style anchor, which has minimal disturbance to the bedlands/benthic habitat. Proper precautions are being taken to ensure that

sewer and pollution discharges are prevented from entering the waters of the state.

- (5) *The public interest suffers no substantial detrimental effect. [WAC 173-14-140(1) or its successor].*

The public interest supports the creation of the open water marina to preserve and rationalize a historic shoreline use. The City Council has determined that it is in the public's interest to maintain a legal location for a live-aboard population within Eagle Harbor.

- (6) *The proposed use is consistent with the provisions of the Zoning Ordinance (BIMC Title 18) and the Comprehensive Plan (Ordinance 94-21).*

The Housing Element of the Bainbridge Island Comprehensive Plan recognizes water-based housing (live-aboard) as a viable component of present and future housing stock on Bainbridge Island, subject to applicable environmental protection. The moorage allowed through this permit supports this housing stock. No upland activities are altered by this use. While the existing City dock, boat launch and bathroom facilities will be used by those moored at the open water marina, no changes to the public park are proposed. As recited in this report, the open water marina is consistent with the policies and regulations of the Shoreline Master Program governing uses in the Aquatic Environment.

## CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this proceeding. Public hearing notice requirements have been met.
2. Based on the record, the application meets the criteria for issuance of a shoreline substantial development permit and a shoreline conditional use. City Ordinance 2007-16 amended the Shoreline Master Program to authorize creation of an "open water moorage and anchorage area" over the leased state-owned aquatic lands subject to this application.
3. WAC 332-30-171 governs residential uses over DNR-managed aquatic lands. Residential uses in an open water moorage and anchorage area located on state-owned aquatic lands are limited to 10% of the total moorage slips unless a greater percentage is authorized by the local jurisdiction under a shoreline master program amendment or conditional use permit that also requires best management practices for waste disposal, no adverse impact to habitat values and non-interference with water-dependent uses (WAC 332-30-171(2)(b)). The City's SMP authorizes 25% residential use of open water moorage slips, increased to 100% pursuant to this Shorelines Conditional Use permit and its supporting findings of fact.
4. Eagle Harbor, long an area of intensive maritime use including both extensive private marinas and Washington State Ferry facilities, is not a pristine aquatic

environment. Anchoring a further 20 small boat buoys in an existing moorage area at depths of 20 feet or greater, plus their resultant moorage use, will not create measurable new habitat impacts. The small open water moorage cluster will provide ample navigational lanes to both the north and south. The open water moorage area is located at a considerable distance west of the ferry dock and will not interfere with ferry operations. Consolidation of live-aboard moorages into a single open water area with centralized management and convenient access to waste disposal facilities will likely result in a net improvement in overall navigation patterns and pollution control.

5. Although the approval process for this proposal has dragged on for years and resulted in an abundance of technical studies, the problems generated by the application do not in fact involve the likelihood of negative or adverse physical impacts. Rather, the problems have been generated by the fact that multiple agencies each with its own administrative scheme have been forced to deal with an unusual historical use that does not fit neatly into a common regulatory pigeon-hole. Most of this saga has thus been occupied by the process of constructing a regulatory niche mutually acceptable DOE, DNR and the City.

## **DECISION**

The Shoreline Substantial Development and Conditional Use Permit applications of the City of Bainbridge Island (File no. SSDP/SCUP 17091) are GRANTED, subject to the following conditions:

### *SEPA Conditions:*


1. To protect juvenile Chinook salmon residing in nearshore areas, work waterward of the actual ordinary high water line shall not be permitted from March 15 through June 14.
2. Extreme care shall be taken to prevent petroleum products, chemicals, or other toxic or deleterious materials from entering the water and degrading water quality. If a spill does occur, or if oil sheen or any distressed or dying fish are observed in the project vicinity, work shall cease immediately and Washington Department of Ecology shall be notified of such conditions. Contact: Northwest Regional Spill Response Section at (206) 649-7000.
3. All live-aboard and transient vessels using the open water marina shall comply with the Open Water Marina Rules and Regulations, Best Management Practices and Sewage Management Plan rules, which are Attachments A, B & C to the Open Water Marina Moorage Rental Agreement.

*Permit Conditions:*

4. The City may allow up to 100 % of the moorage slips to be used for live-aboard vessels; however any slip not occupied by a registered live-aboard vessel shall be made available for transient vessels.
5. The open water marina configuration shall be in substantial conformance with the layout and design shown on the plans dated June 2011.
6. Washington State Department of Fish & Wildlife Hydraulic Project Approval and an Army Corps of Engineers Permit are required prior to beginning any work on this project.
7. The open water moorage use authorized hereunder presupposes the continuing existence of a valid lease agreement between DNR and the City. If the currently existing lease is not extended before its expiration date, the future use of facilities authorized hereunder will become a month-to-month tenancy subject to termination by DNR.

A copy of all public agency approvals and approved drawings shall be given to all contractors performing work at the site prior to beginning any construction work.

Entered this 29<sup>th</sup> day of November, 2011.



Stafford L. Smith  
City of Bainbridge Island Hearing Examiner

This is the final decision of the City of Bainbridge Island in this matter. Final shorelines permit decision authority lies with the Washington Department of Ecology, and the City's decision may be appealed to the state Shorelines Hearings Board. It is the responsibility of any person seeking review of this decision to consult applicable City codes and state law.