



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

Diane M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number:	2205775
Applicant Name:	Jim Francis
Address of Proposal:	1515 Fairview Ave East

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to locate five floating boat sheds at a site where vessel repair and associated moorage is the established use. The project includes one six-foot by 120-foot floating pier along the northern side of three of the sheds and five floats in each of the sheds that range in size from 955 s.f. to 1,836 s.f.

The following approvals are required:

- **Shoreline Substantial Development Permit** – (SMC Chapter 23.60).
- **SEPA - Environmental Determination** - (SMC Chapter 25.05).

SEPA DETERMINATION: Exempt DNS MDNS EIS
 DNS with conditions*
 DNS involving non-exempt grading or demolition or
involving another agency with jurisdiction.

BACKGROUND DATA

Site Area and Vicinity Development

The subject site is located at the Lake Union Drydock Company (LUDC) on a waterfront parcel in the Southeastern area of Lake Union along Fairview Ave East, south of East Garfield Street. The site is zoned Industrial General 1 with an unlimited height limit for industrial uses and 45 feet for non-industrial uses (IG1 U/45) and is within an Urban Maritime (UM) shoreline environment with a height limit of 35 feet. The site has an area of approximately 12 acres; almost all of this area is submerged land. The site is developed with vessel repair as its use.

The area where the floating sheds are located is currently along the southern edge of the southern most parcels on lands leased by Seattle City Light to the LUDC. The dry land portion of the site is minimal and does not contain any buildings. An accessory office is located in a building over water and several docks with associated moorage and vessel repair.

Most of the surrounding property is also zoned IG1-U/45, although south of this site the zoning is C40. The shoreline designation for this site is Urban Maritime and for the surrounding parcels the shoreline designation is Urban Maritime and Conservancy Waterway.

Proposal

The proposal is to legalize the five floating boat sheds to be used for minor vessel repair. These boat repair sheds are existing at this site and the permit application is in response to a Notice of Violation (DPD File No. SH212935). Additionally, the proposal includes a 720 s.f. floating pier and one floating pier associated with each boat shed ranging in from 955 s.f. to 1,836 s.f. in size. One float is located inside each boat shed. The size of each boat shed and associated float is as follows:

- Boat shed 1: 2,682 s.f. with a 984 s.f. float
- Boat shed 2: 3,017 s.f. with a 955 s.f. float
- Boat shed 3: 2,832 s.f. with a 976 s.f. float
- Boat shed 4: 4,580 s.f. with a 1,836 s.f. float
- Boat shed 5: 2,886 s.f. with a 1,038 s.f. float

The total new over-water coverage from the five boat sheds and common float is 16,717 s.f. The area of the five floats associated with each boat shed is not included in the overwater coverage because these floats are inside the boat sheds and do not create additional over-water coverage. The proposal includes mitigation for the increase in overwater coverage. This mitigation proposal includes; removal of over water coverage (2,980 s.f.), removal of in-water structures (700 s.f.), debris removal from the aquatic substrate (2,500 s.f.), and removal on non-native vegetation (mainly ivy) adjacent to the shoreline (1,400 s.f.).

Public Comment

No public comments were received during the public comment period, which ended on January 17, 2003.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Substantial Development Permit Required

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC.*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58 RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the State to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against effects to public health, the land use and its vegetation and wild life, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline are to be designed and conducted in a manner to minimize, insofar as possible, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to act primarily in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local Shoreline Master Program, codified in the Seattle Municipal Code at Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions.

B. THE REGULATIONS OF SMC CHAPTER 23.60

SMC Section 23.60.064 requires that the proposed use(s) must: 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) be permitted in the shoreline environment and the underlying zoning district and 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be required.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies, which are part of the Seattle Comprehensive Plan's Land Use Element, and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district. The proposed development action will occur over water and is located within an Urban Maritime (UM) shoreline environment. The purpose of the UM Environment is to preserve areas for water-dependent and water-related uses while still providing some views of the water from adjacent streets and upland residential streets. Public access shall be second in priority to water-dependent uses unless provided on street ends, parks or other public lands.

Uses Allowed and Prohibited in the Zone

Under limited circumstances the code allows for uses that are otherwise prohibited as principal uses to be allowed as accessory uses. SMC 23.60.092 provides "Uses prohibited as principal uses but customarily incidental to a use permitted in a shoreline environment may be permitted as accessory uses only if clearly incidental and necessary for the operation of a permitted principal use unless expressly permitted or prohibited as accessory uses." The code allows

marine retail sales and services uses, including the proposed minor vessel repair, over water, as a principal use on a waterfront lot within the Urban Maritime (UM) Shoreline Environment (SMC 23.60.720).¹ However, covered moorage is not allowed in Lake Union and Portage Bay in the UM environment (SMC 23.60.728). “Moorage, covered” is defined in SMC 23.60.926, as a pier or system of floating or fixed accessways covered with a roof, to which boats on the water may be secured.

Boatshed use as accessory to minor vessel repair

The applicant provided information intended to demonstrate that the use of the boat sheds was accessory to the principal use of minor vessel repair. This information was evaluated to determine if the use of the boat sheds was clearly incidental and necessary for the operation of the permitted use. Each boat shed is owned by a private boat owner. Each boat shed owner leases the area in which the boat sheds are located from LUDC. Each boat shed owner’s boat is moored in its shed 50 – 60 percent of the time which corresponds to the winter season when recreational boating activity is typically less active. During a portion of the winter moorage time the boats are being repaired and maintained. The repair and maintenance activity includes: engine work, hull repair, interior and exterior painting, stripping and varnishing work, electrical work, installation of holding tanks, installation of new generators. This maintenance work, however, is not being performed by LUDC, but by agents and employees of the boat owners and the work is being performed mainly on the boat shed owners’ boats.

According to LUDC, it has been operating as a marine repair facility at this location since 1946 and based on aerial photos of the LUDC operation that span from 1961 to the present. The boat sheds at issue in this matter were installed by the individual yacht owners in conjunction with the yachts they cover. The evidence provided by the applicant does not support the contention that these boatsheds are “clearly incidental and necessary for the operation of [LUDC’s] permitted principal use” as required by SMC 23.60.092. Instead, the evidence supports a determination that the boat sheds primarily provide winter covered moorage during which time the yacht owners engage in off-season boat repairs.

Support for this determination is found in the fact that approximately 50 – 60 percent of the time each boat shed owner’s boat is moored in its shed, as discussed earlier, additionally, approximately twenty-five (25) percent of the time, corresponding generally to the summer months, the boats are not located in the boat sheds and are instead in use by the yacht owners and located at their residences or other summer locations. The remaining fifteen to twenty-five (15 - 25) percent of the time is when the boat sheds could be available for other boats to be repaired. The applicant has provided information from two boat shed owners that other parties have used two boat sheds, boat sheds 1 and 4, to repair boats other than the boat shed owners’ boats.

Currently the boat sheds serve primarily as moorage for the private boat owners’ own boats, like any slip in a recreational moorage, and they are used by and for the private boat owners’ own work on their own boats. The only difference between moorage here and moorage at a recreational marina is that this moorage is covered, an advantage no other Lake Union moorage

¹ "Retail sales and service" means a commercial use in which goods are rented or sold at retail to the general public for direct consumption and not for resale, or in which services are provided to individuals and/or households. Merchandise may be bought as well as sold and may be processed as long as the items processed are sold only on the premises, and production is incidental or subordinate to the selling, rental or repair of goods. SMC 23.84.032.

enjoys. The fact that repair work is done in the sheds does not change their status as essentially unrelated to LUDC's operations. The sheds are being used as covered moorage, not as a retail sales and service, and such a use is not accessory to LUDC's operations and not allowed on Lake Union.

However, the proposed use is allowed if the applicant uses the boatsheds as accessory to the permitted use of the site, which is minor vessel repair. The applicant has modified their proposal and the project is conditioned to meet the use standards of the shoreline code. The boatsheds will be occupied by boats that are undergoing, ongoing, repair and the boat shed owners' boats are required to have and provide evidence that they have moorage at another facility.

Development Standards

Marine retail sales and services must meet the development standards for the UM Environment (SMC 23.60.750), as well as the general development standards for all shoreline environments (SMC 23.60.152). Additionally, the proposed project must also meet the development standards of the underlying General Industrial (IG1 U/45) zone (SMC 23.50). The Director may attach to the permit or authorize any conditions necessary to carry out the spirit and purpose of, and ensure the compliance with, the Seattle Shoreline Master Program (SMC 23.60.064).

The proposed action is subject to the following general and specific shoreline development standards:

General Development Standards for all Shoreline Environments (SMC 23.60.152)

These general standards apply to all uses in the shoreline environments. They require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with best management practices for the specific use or activity. Among other requirements, all shoreline development and uses must: 1) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected; 2) be located, designed, constructed, and managed in a manner that minimizes adverse impact to surrounding land and water uses and is compatible with the affected area; and 3) be located, constructed, and operated so as not to be a hazard to public health and safety. The floating boat repair structures, as conditioned and mitigated, are consistent with the general standards for development within the shoreline area. General development standards (SMC 23.60.152) state that Best Management Practices shall be followed for any development in the shoreline environment. These measures are required to prevent contamination of land and water. The Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. A condition is imposed on this permit pursuant to Shoreline and SEPA authority, to ensure that Best Management Practices are followed. To ensure conformance with the General Development Standards and the Shoreline Master Program, the proponent will be required to notify contractors and subcontractors of the conditions of this permit.

Development Standards for UM Shoreline Environments (SMC 23.60.750)

The development standards set forth in the Urban Maritime Shoreline Environment are as follows:

SMC 23.60.752 Height in the UM Environment

The development standard limit the height of structures to a maximum height of 35-feet unless the structures are accessory to a water-dependent or water-related use and the intended use of the structure is requires additional height. A height up to fifty-five (55) feet may be authorized by the Director when not more than 25% of the site is covered by the taller structures and these structures don't block a substantial number of upland residence views. The proposed accessory use to LUDC operations meets the UM height requirements.

SMC 23.60.754 Lot coverage in the UM Environment

Structures may occupy up to fifty percent of submerged land areas and up to 65 percent of submerged water front lot if the depth of the dry land portion is less than 50 feet, which is the case at this site. Dry docks are allowed to occupy an additional twenty-five (25) percent of the submerged lot; however, the total lot coverage of the submerged lot cannot exceed seventy-five (75) percent. The proposal meets the lot coverage requirements.

SMC 23.60.756 View corridors in the UM Environment

A view corridor that is fifteen percent of the width of the lot is required. In lieu of a view corridor a public viewing platform can be provided. The applicant has proposed a public viewing platform to be constructed on the shoreline that meets the viewing platform standards.

SMC 23.60.758 Regulated public access in the UM Environment

The principal use of the site is considered water-dependent and therefore public access is not required.

C. THE PROVISIONS OF CHAPTER 173-27 WAC

Chapter 173-27 of the WAC sets forth permit requirements for development in shoreline environments and gives the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and RCW 90.58 incorporate the policies of the WAC by reference. These policies have been addressed in the foregoing analysis, fulfilling the intent of WAC 173-27.

Summary

Covered moorage is not permitted as a principal use; however, the covered moorage at this site, as modified through the review process and is it is proposed to operate can be considered accessory to the legally established vessel repair use on the site. Therefore, the proposed project is conditioned to meet the definition of an accessory use per SMC 23.60.092 and 23.60.792 and the provisions set forth by 90.58 RCW, 173-27 WAC, and Chapter 23.60 SMC also known as the Seattle Shoreline Master Program (SSMP).

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development Permit is **Conditionally Approved**.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated December 9, 2002 and the Biological Evaluation (BE) dated August 20, 2002. The information in the checklist, B.E., and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part: "Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation," subject to some limitations. Under such limitations/circumstances (SMC 225.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-Term Impacts

Construction Impacts

The SEPA Overview Policy (SMC 25.05.665) and the SEPA Construction Impacts Policy (SMC 25.05.675B) allow the reviewing agency to mitigate impacts associated with construction activities.

Because this project is already constructed the construction-related impacts have occurred and would have included: temporary increase in noise levels, increase in water turbidity levels, increased levels of fugitive dust and fumes from the construction equipment, disturbance of the aquatic environment and displacement of some fish wildlife species due to increased water turbidity levels and increased noise from the construction activities. Due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC 25.05.794). Although not significant, these impacts are adverse and, in some cases, mitigation may be warranted.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); and State Air Quality Codes administered by the Puget Sound Clean Air Agency (air quality). In addition Federal and State regulations and permitting authority (Section 10 Permit, 404 Permit from the Army Corps and HPA permit from Washington Department of Fish and Wildlife) are effective to control short-term impacts on water quality. Compliance with these codes and/or ordinances will lessen the environmental construction impacts of the proposed project. However because this project has already been constructed it is not known as to whether any of the above regulations were followed.

Because this project is already constructed no SEPA conditioning of potential short-term impacts appears to be warranted.

Long-Term Impacts

Long-term or use related impacts are anticipated from the proposal and include: increased overwater coverage and increased amount of potential pollutants entering the water caused by the proposed use and possibly increased human activity in the shoreline environment, which can lead to increased adverse impacts on fish behavior and habitat. These long-term impacts may be considered minor, if appropriately mitigated, resulting in a determination of non-significance. Therefore the long-term impacts merit more detailed discussion in relation to the need for mitigation.

Plants and Animals

The structures are located entirely over water for a total of 15,997 s.f. from the boat sheds and 720 s.f. for the new float that will be used to access the sheds.

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit the Lake Washington Ship Canal including the proposed project area. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

This project is proposed to occur in the aquatic and shoreline environment of the Lake Union, which is habitat of Chinook salmon. The project site serves as a migration corridor as well as potentially a rearing area for juvenile Chinook salmon from the Cedar River and other water bodies in Water Resource Inventory Area 8. Additionally, predators of juvenile Chinook are known to inhabit areas under overwater structures and may use these areas as cover while preying on juvenile Chinook. Small mouth bass, an introduced predator of juvenile Chinook, also use the base of pilings under pier structures as nesting sites.

Overwater coverage reduces the amount and quality of natural habitat of juvenile Chinook salmon and provides habitat for predator species of juvenile Chinook. The location of the overwater coverage is approximately 300-ft from the shoreline and extends along the southern side of the property out to a distance of approximately 500 ft from the shoreline. The approximate depth of water in this area is 40-ft. This new overwater coverage is designed to be placed in deeper water, which will mitigate some of the impacts. Additionally mitigation will occur through removal of over water coverage (2,980 s.f.), removal of in-water structures (700 s.f.), debris removal from the aquatic substrate (2,500 s.f.), removal on non-native vegetation (mainly ivy) adjacent to the shoreline (1,400 s.f.), and the modification of boat sheds #1 and #4 to include roofing and upper shed material that allows natural light through to the inside of these sheds comparable to sheds #2, #3, and #5.

Environmental Health/Water Quality

SEPA Policy 25.05.675-F provides the authority to mitigate impacts resulting from toxic or hazardous materials and transmissions. The location of the subject project is over the water and this area is proposed to be used for boat repair work. Material that will be used at the site includes but is not limited to: fiberglass, fiberglass resin, paint, gel coat, varnish, and petroleum products. There exists potential to drop some of this hazardous material into the water and this would adversely impact water quality, plants and animals and the general welfare of the aquatic environment. Additionally, other such work such as sanding can introduce deleterious material into the aquatic environment. In light of this, the proposal will be conditioned to require that all people that repair boats or use any deleterious material in association with this project shall read, sign and follow the Best Management Practices plan developed for this site. This plan shall include a description of preventative measures that shall be used to prevent toxic substances from entering the Lake Union, measures that will be taken, in the event of a toxic spill, and the requirement that an emergency spill kit be kept at the site. Additionally, trained personnel will be required to be on-site to implement the toxic spill clean-up plan.

DECISION SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance with conditions. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (C).
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

SEPA CONDITIONS

Prior to issuance of Master Use Permit

1. The Best Management Practices Plan shall be resubmitted for review and approval and shall include a description of required measures that will ensure that hazardous or toxic materials are controlled during normal operation of the repair work. This plan shall include measures that will be taken in the event of a toxic spill, and the requirement that an emergency spill kit be kept at the site. Personnel working at this site shall be trained to ensure the proper implementation of this plan.
2. The plans shall be updated to include the proposed mitigation and a description of the work shall be included on the plan set.

3. The plans shall be updated to include the modification of boat sheds #1 and #4 to include roofing and upper shed material that allows natural light through to the inside of these sheds comparable to sheds #2, #3, and #5.

Permanent for the Life of the Project

4. The Best Management Practices Plan shall be implemented.
5. Each person who repairs boats at this site shall be required to read, sign, and follow the Best Management Practices plan that has been developed for this project.
6. A spill prevention kit shall be located on site and personnel shall be properly trained in using the spill protection kit.
7. The roof and shed features that allow ambient light through each boat shed shall be maintained.

SHORELINE CONDITIONS OF APPROVAL

8. This permit authorizes five boat sheds as accessory use to the authorized use of minor vessel repair at this site. The five boat sheds shall be exclusively devoted to the commercial enterprise of vessel repair.
9. The boat repair sheds shall be used on a regular and ongoing basis for minor vessel repair as defined in SMC 23.60.942. All boats moored in the sheds shall be under contract for on-going repair with a licensed business that repairs vessels. Documentation of this shall be available upon request at any time.
10. Records demonstrating that any occupied boat shed is being leased or subleased by an entity with a business license for boat repair shall be available upon request, at any time.
11. Boats undergoing repair in the sheds shall maintain legal permanent moorage elsewhere, unless the nature of the repairs, documented in written contract(s), is of a nature that requires an extensive period of time, longer than six months, to fully complete the repair.

Signature: (signature on file)
Maggie Glowacki, Land Use Planner
Department of Planning and Development

Date: December 14, 2006