



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

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

Application Number: 2307917

Applicant Name: Curt Boozer

Address of Proposal: 3708 W Commodore Wy

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit for construction of a pier, float and ramp to a total length of 91 feet accessory to a single-family residence. Project includes grated decking for light penetration, shoreline planting and removal of derelict piling.

The following approvals are required:

Shoreline Substantial Development Permit - to allow a pier in an Urban Residential/ Conservancy Recreation (CR) shoreline environments pursuant to Seattle Municipal Codes 23.60.360 and 23.60.540.

SEPA - Environmental Determination (Section 25.05, Seattle Municipal Code).

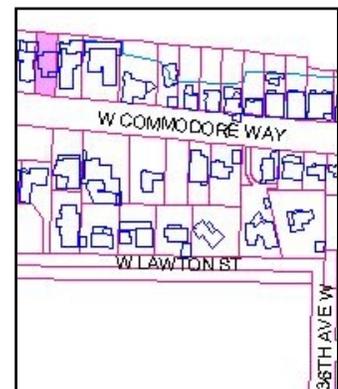
SEPA DETERMINATION:

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

BACKGROUND DATA

Site Location and Description

The subject site is located at 3708 West Commodore Way on the south shore of Salmon Bay Waterway. The submerged portion of this site is located in the Conservancy Recreation (CR) shoreline environment. The dry land portion of the site is located in the Urban Residential (UR) shoreline environment. The property is developed with a single family residence on the dry land portion.



Zoning

Single Family 5000, with the Urban Residential and Conservancy Recreation (UR/CR) Shoreline Master Program designations. The UR designation is for the dry-land portion of the site and the CR designation is for the submerged land portion of the site.

Area Development

North: Salmon Bay Waterway; Conservancy Recreation shoreline designation
East: Single Family 5000; Urban Residential and Conservancy Recreation shoreline designation
South: Single Family 7200; Urban Residential shoreline designation
West: Single Family 5000; Urban Residential and Conservancy Recreation shoreline designation.

Proposal

The applicant is proposing to construct a new pier accessory to an existing single-family residence. The proposed pier would be attached to an existing concrete stairs and would consist of a plastic thru-flow grated 4 ft. wide by 45 ft. walkway; a 3 ft. 3 inch by 24 ft. grated ramp and a 100 sq. ft. float measuring approximately 18 ft. by 5-ft 6 inches. Water coverage will be approximately 358 sq. ft. The total length of the pier is approximately 87 ft.

Public Comment

Notice of the proposal was published on February 3, 2005. The public comment period ended on April 1, 2005. No comments were received regarding this project proposal.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

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 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 adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner 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.

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 primarily act 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 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. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outline in RCW 90.58.

B. The Regulation of Chapter 23.60

Chapter 23.60 of the Seattle Municipal Code is known as the "Seattle Shoreline Master Program." In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SSMP 23.60.030 (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use permit) or conditioning that is necessary to protect and enhance the shorelines area (SSMP 23.60.064). In order to obtain a shoreline substantial development permit, the applicant must show that the proposal is consistent with the shoreline policies established in SSMP 23.60.004, and meets development standards for all shoreline environment established in SMC 23.60.004 as well as the criteria and development standards for the shoreline environment in which the site is located, any applicable special approval criteria and the development standards for specific uses.

The site is classified as a waterfront lot (SMC 23.60.924). The shoreline designations for the site are Urban Residential/Conservancy Residential (UR/CR) (SMC 23.60.540 and 23.60.360). Residential piers are a permitted use in these shoreline environments.

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 location 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 purpose of the UR and CR Environments are stated in SMC 23.60.220C.6 and C.3 respectively. The applicable sections of these regulations to the current proposal are in the Conservancy Recreation Environment maximum effort to preserve, enhance or restore the existing natural ecological, biological or hydrological conditions shall be made in designing, developing, operating and maintaining recreational facilities and in the Urban Residential Environment residential areas shall be protected in a manner consistent with the Single Family Residential Areas Regulations.

SMC 23.60.064. - Procedures for Obtaining Shoreline Substantial Development Permits

The proposed project is a permitted use in the UR/CR environment (SMC 23.60.540 and 23.60.360) and the underlying Single Family Residential 5000 zoning district (SMC 23.44). As designed, the proposal conforms to the general development standards and the requirements of the underlying residential zone and of the UR/CR overlay zones.

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environment. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. All shoreline development and uses must, in part: 1) minimize and control any increases in surface water runoff so that receiving water quality and shore properties are not adversely affected; 2) be located, designed, constructed, and managed in a manner that minimizes adverse impacts 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; 4) all shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes; 5) All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion; 6) All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.

The City's Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. In conjunction with this effort a Director's Rule, 6-93, was developed to apply best management practices (BMPs) to prevent erosion and sedimentation from leaving construction sites or where construction will impact receiving waters. Due to the location of the proposed work, the potential exists for negative impacts to Salmon Bay during construction. To avoid this, the applicant should take measures to prevent contamination of land or water and use materials and construction methods which prevent toxic materials,

petrochemicals and other pollutants from entering surface water during and after construction, and prevent any construction debris from entering the water. SMC Section 23.60.064.E provides authority for conditioning of shoreline substantial development permits as necessary to carry out the spirit and purpose of and assure compliance with the Seattle Shoreline Code, Chapter 23.60 and with RCW 90.58.020 (State policy and legislative findings).

The proposal, as designed and conditioned below including the proposed mitigation, would not adversely affect the quality and quantity of surface and ground water on and adjacent to the site on a long-term basis. No planned discharge of solid wastes would occur. Spillage of petroleum or diesel products must be avoided and contained should it occur. No intentional release of oil, chemicals, or other hazardous materials shall occur. Erosion would not result from the development. Impacts to fish and wildlife and shoreline processes are minimized. Long-term impacts to surrounding land and water uses are also minimized. No vegetation will be cleared with this proposal. No hazard to public safety or health is posed by this development. Navigation channels would not be affected. The proposal would not affect existing shoreline stabilization and no submerged public right-of-way or view corridors would be significantly affected. The conditions noted at the end of this report, which are based on the criteria of SSMP 23.60.152, ensure that the project conforms to the goals and regulations of the Seattle Shoreline Master Program. The public interest suffers no substantial detrimental effect from the proposal.

The proposed residential use as conditioned is consistent with these general standards for development within the shoreline area, thereby minimizing any adverse impact to the shoreline area, to water quality and will not be a hazard to the public health and safety.

SMC 23.60.540 and SMC 23.60.390 - Development Standards for the UR and CR Environments

The development standard for the UR and CR environments pertinent to this proposal concerns lot coverage of all structures, including piers. The CR environment development standards also contain requirements for natural area protection.

The lot coverage regulations for the shoreline environment require that structures, including piers, not occupy an area greater than thirty-five (35) percent of a waterfront lot. As conditioned at the end of this report, under the heading of *Non-Appealable — Prior to LU Permit Issuance*, the proposals total lot coverage shall be reduced to thirty-five (35) percent of lot coverage.

Natural area protection of the CR environment requires that all developments in this environment be located and designed to minimize adverse impacts to natural areas of biological significance and that development in critical natural areas be minimized. Critical areas include fish spawning areas and migration routes. Design elements of the project have minimized the adverse impacts on the shoreline environment including fish migration routes. These design elements include the following:

- Installing a plastic thru-flow grated surface for the pier and installing steel piles;
- Planting native vegetation along the shoreline at the subject property;
- Removal existing debris on the substrate of the subject property; and
- Removal of eight (8) to ten (10) piling in a nearby public right of way.

SMC 23.60.204 – Piers and Floats Accessory to Residential Development.

These standards apply to residential development in the shoreline environment. The standards specify the size and location of piers and floats. This project meets the described standards.

SMC 23.60.362 – Accessory uses permitted outright in the CR Environment.

Piers and floats accessory to residences are permitted outright to residences on adjacent land designated UR. This is the case for this proposal.

C. The Provisions of Chapter 173-27 WAC

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). Since DOE has approved the Seattle Shoreline Master Program, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistent with WAC 173-14 and RCW 90.58. As discussed in the foregoing analysis, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

Thus, as conditioned below, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

Conclusion

Development requiring a Shoreline Substantial Development Permit can only be approved if it conforms to the policies and procedures of the WAC, RCW and with the regulations of Chapter 23.60, Seattle Shoreline Master Program.

The project as proposed meets the specific standards for development in the Urban Residential and Conservancy Recreation environments. As proposed and conditioned it also conforms to the general development standards, as well as the requirements of the underlying zone, and therefore should be approved.

Pursuant to the Director's authority under Seattle's Shoreline Master Program, to ensure that development proposals are consistent with the policies and procedures, and conforms to specific development standards of the underlying zone, and having established that the proposed use and development are consistent with the Seattle Shoreline Program, the proposal is hereby approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

ANALYSIS - SEPA

Disclosure of the potential impacts from this project was made in the following documents: the Environmental Checklist dated January 14, 2005, and the Joint Aquatic Resource Permit application (JARPA) dated May 7, 2002, the plans and supplemental information in the project file. The information in the SEPA checklist, the supplemental information described above, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and 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 or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-term Impacts

The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in water turbidity levels, increased levels of fugitive dust and fumes from the construction equipment, disturbance of shorelines, aquatic habitat and displacement of some fish and wildlife species due to the disturbance 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 Air Pollution Control 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 impacts of the proposed project.

The proposed construction work will take place in and adjacent to the waters of Salmon Bay. Additionally, construction material will be delivered by barge over-water. With the proposed work taking place in and adjacent to water and the delivery of construction material taking place over-water, there exists the potential for debris and other deleterious material to enter the water during this proposed work. Best management practices (BMPs) should be employed to decrease the probability of debris or other deleterious material from entering the water during the proposed work. A boom should be deployed around the construction area to contain any debris that enters the water during construction. At a minimum the floating debris that enters the water during construction should be collected once per day. This material should be contained on site and then disposed of at the appropriate upland facility. General in water construction activity will be restricted to the times allowed by the Army Corps Letter of Permission and the Washington State Hydraulics Permit.

Construction material and equipment pose some potential danger of water and near shore contamination and shoreline erosion. The contamination from spills could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, it is necessary to condition the project to require that prior to commencing construction emergency containment procedures be developed and all necessary equipment be stocked on the site. It is also warranted to require the use of BMPs to minimize erosion along the shoreline caused by storage and staging construction material in this area.

No further SEPA conditioning of potential short-term impacts appears to be warranted.

Long-term Impacts

Long-term or use related impacts are also anticipated from the proposal and include: an increase in overwater coverage by approximately 358 square feet. These long-term impacts are potentially significant without mitigation; therefore, merit a detailed discussion of the impacts and the required mitigation.

Plants and Animals

Chinook salmon a species listed as threatened under the Endangered Species Act (ESA) in March 1999, and coastal-Puget Sound bull trout, a species listed as threatened under ESA in November of 1999 are known to inhabit Salmon Bay 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 take place in Salmon Bay which is rearing habitat and is part of the migration corridor of Chinook salmon from the Cedar River and the other water bodies in Water Resource Inventory Area 8. Coastal-Puget Sound bull trout have been found in this area during their marine life stage.

Clearly identified long-term impacts on juvenile Chinook salmon and coastal-Puget Sound bull trout and the aquatic environment include an increase in overwater coverage and number of piles present in the habitat of threatened species. Overwater coverage and piles impact the quality of natural habitat of juvenile Chinook salmon and coastal-Puget Sound bull trout by creating shading and reducing the area of substrate that is used for benthic and epibenthic species, which are a food source for salmonids.

As provided by SMC 25.05.350 A, when making a threshold determination the lead agency may consider mitigation measures that the agency or applicant will implement. Proposed mitigation measures may allow the lead agency to issue a Determination of Non-Significance (DNS). These mitigation measures can be in the form of clarification of the proposal, changes to the proposal, or the project may be conditioned to include the mitigation measures. The applicant has included mitigation measures in the project to offset the impacts of the proposed work as shown on Plan Sheets and DPD has imposed conditions on this project. These mitigation measures and conditions are listed below.

- Installing a plastic thru-flow grated surface for the pier and installing steel piles;
- Planting native vegetation along the shoreline at the subject property;
- Removal existing debris on the substrate of the subject property; and
- Removal of eight (8) to ten (10) piling in a nearby public right of way.

Each of these mitigation measures and conditions are believed to minimize impacts on juvenile and adult salmonid habitat at the site and improve the aquatic habitat for juvenile Chinook salmon, coastal-Puget Sound bull trout and other species. Collectively these measures will minimize the dark areas that are created by piers and floats, minimize and mitigate the impacts to the substrate and increase the allochthonous input to the system from terrestrial vegetation. This in turn will provide more food for juvenile salmonids and should remove the barrier impact of structures on migration and rearing by minimizing the shading cause by the piers thus allowing the juvenile fish to remain in the shallow water during their migration and rearing reducing the juvenile Chinooks' vulnerability to predation in the nearshore environment.

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 not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2)(C).

SEPA AND SHORELINE CONDITIONS

The following conditions to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

Prior to Issuance of the Construction Permit

1. Spill prevention and response procedures shall be developed prior to commencement of construction and shall include the requirement that the appropriate materials be kept at the site for quick response to any toxic spills, such as fuel.

During Construction

The following conditions(s) to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

2. Appropriate best management practices (BMPs) shall be employed to prevent debris and deleterious material from entering Salmon Bay during the proposed in-water work. BMPs shall include the deployment of a boom surrounding the construction area. The boom shall remain in place for the duration of the proposed work.
 - a. The boom shall serve to collect any floating debris, which may enter the water during the construction activities. This floating debris shall be removed from the water daily, stored on-site, and then disposed of in the appropriate upland facility.
 - b. If heavy (sinking) debris enters the water during the repair work, the location of the debris shall be documented in a log to be kept through the duration of the project. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during construction.
3. No toxic materials, petrochemicals and other pollutants shall enter the surface water during the proposed repair work. The spill prevention and response procedures developed for this project shall be followed and the appropriate material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.
4. Personnel shall be trained in the plans and procedures for the prevention, containment and clean-up of toxic material.
5. No fascia shall be installed below the stringers and caps because it blocks natural light from reaching under the pier.
6. No treated decking shall be allowed.
7. Grated decking shall be used to achieve sixty percent light penetration of the water under the pier at the completion of the new pier, ramp and float installation.
8. The applicant's pier structure minus the decking is to be constructed of only steel or aluminum compounds for durability as well as to ensure that no hazardous chemicals leach into the water, per plan. Any treatment of the steel or aluminum material shall be non-leaching and non-toxic to the estuarine and marine environment.
9. Native vegetation shall be planted at the site as indicated on the plans.

