



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

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

Application Numbers: 3003725 and 3004206
Applicant Name: Matthew Blinstrub for the Port of Seattle
Address of Proposal: 3225 East Marginal Way S.

SUMMARY OF PROPOSED ACTION

(3003725) Shoreline Substantial Development Permit to demolish 16,000 square foot cargo terminal facility and construction of 311 linear foot bridge and piles (Port of Seattle). Project includes 17,000 cubic yards of grading and improvements accessory to cargo terminal. Determination of Non-Significance prepared by the Port of Seattle.

(3004206) Shoreline Substantial Development Permit to allow construction of a 311 linear foot bridge and pilings (Port of Seattle). Determination of Non-Significance prepared by the Port of Seattle

The following Master Use Permit components are required:

Shoreline Substantial Development Permit – To allow construction of a 311 foot long bridge, installation of associated pilings, and 17,000 cubic yards of grading in an Urban Industrial (UI) Shoreline Environment. - (SMC 23.60.540A4)

SEPA - For conditioning only. SEPA analysis was completed by the Port of Seattle; a Determination of Non-Significance was issued on September 23, 2005.

BACKGROUND DATA

Existing Conditions

The subject site is located on the east side of the East Duwamish Waterway in an Urban Industrial (UI) shoreline environment on East Marginal Way S. at the intersection of S. Forest St. The zoning designation of the site is General Industrial 1 (IG1), which continues in all directions from the site.

Surrounding uses in the East Duwamish Waterway consist primarily of Port of Seattle cargo facilities. Uses east of E. Marginal Way S. are predominantly industrial, including manufacturing and railway uses. The subject site is currently occupied by open water in the public right of way (S. Forest St), and a vacant fenced privately owned peninsula area. The peninsula was historically used as a rail/barge loading facility, a dock, and moorage.

Proposal

The applicant proposes to demolish the existing bridge adjacent to E. Marginal Way S., remove up to 400 creosote pilings adjacent to the peninsula, cut remaining creosote pilings at the mud line, place up to 600 cubic yards of clean sand in the area of piling work, remove rail track and rail ties, remove fencing, clear vegetation, and remove other items associated with the existing bridge connection.

The applicant proposes to pave most of the peninsula, build a 311-foot long bridge to connect the two terminals, re-stripe areas of E. Marginal Way S., add sidewalk and bike lane areas adjacent to the E. Marginal Way S. road way, and add vegetation to the perimeter of the peninsula and inlet areas.

The proposed bridge would be placed over the current open water area at S. Forest St to connect Terminals 25 and 30. Currently, the two Terminals are connected via a one-lane bridge adjacent to E. Marginal Way S., located in the public right of way, and utilized via a street use permit. The Port of Seattle has requested a street vacation of S. Forest St. in order to build the proposed bridge (CF 307732).

Public Comment

Public notice of this proposal was issued on February 23, 2006. DPD received no comment letters.

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 shall 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 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 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. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. THE REGULATIONS OF CHAPTER 23.60

Chapter 23.60 of the Seattle Municipal Code implements the City's Shoreline Master Program. In evaluating requests for substantial shoreline development permits, a proposed use must meet the approval criteria set forth in SMC 23.60.030 (cited above), and be consistent with the shoreline policies established in SMC 23.60.004. Development standards of the shoreline environment and underlying zone must be considered and a determination made of any special requirements. Required mitigation measures, if any, must be identified.

SMC 23.60.064 provides authority for issuance of Shoreline Substantial Development permits as necessary to carry out the spirit and purpose of and assure compliance with SMC 23.60 and RCW 90.58. The regulations of Section 23.60.064 require that the proposed use:

- 1) is permitted in the shoreline environment and the underlying zoning district
- 2) conforms to all applicable development standards of both the shoreline environment and underlying zoning; and
- 3) satisfies the criteria of shoreline variance, conditional use, and/or special use permits as may be required.

The proposed development at this site requires a shoreline substantial development permit. In evaluating an application for development, the Director may attach to the permit any conditions necessary to carry out the spirit and purpose of, and assure compliance with, this chapter and the RCW regulations (Section 23.60.064 E).

As referenced, the site is located in the Urban Industrial Shoreline Overlay. Accordingly, the following development standards are applicable to the project:

SMC 23.60.840 – Permitted uses on waterfront lots in the UI Environment

This section permits the outright use of structures accessory to a cargo terminal. The underlying zoning for the portion of the facility in the Shoreline is in the IG1-U/85 zone. The use is permitted in this zone, per SMC 23.50.

SMC 23.60.872 – Height Requirements

While the underlying industrial zoning allows for an unlimited or an 85-foot height limit (depending upon a proposed use) at this site, the portion of the site within the Shoreline Zone must comply with the 35-foot height limit pursuant to subsection (A). The determination of height is also governed by Shoreline Height Measurements in SMC 23.60.952. The applicant has documented in the plans submitted, dated February 2, 2006, that the height of the structure within the Shoreline Overlay will not exceed the 35 foot height limit in this zone.

SMC 23.60.874 – Lot coverage in the UI Environment

The project is located on a waterfront lot. Per subsection A, the cumulative total of the proposed structure and the existing ones may occupy 100 percent of the lot's submerged and dry-land area.

SMC 23.60.876 – View Corridors in the UI Environment

This code section requires a minimum of 35 percent of the lot devoted to view corridor with a mix of water-dependent or water-related uses and non water-dependent uses if the water-dependent uses or water-related use occupies less than fifty percent of the dry land portion of the lot. The existing and proposed expansion of the cargo terminal use consists of 100% water-dependent uses, therefore this criterion does not apply.

C. The Provisions of Chapter 173-27 WAC

Chapter WAC 173-14 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). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

Summary

In conclusion, the proposed development within the Urban Industrial (UI) Shoreline Environment will be consistent with Chapter 23.60 SMC, also known as the Seattle Shoreline Master Program and

conforms to the specific standards for development in the UI shoreline environment, subject to the conditions listed below, imposed pursuant to the Director's authority (SMC 23.60.064E).

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

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

ANALYSIS – SEPA

The Port of Seattle has taken the lead in SEPA review for this proposal, and issued a Determination of Non Significance on September 23, 2005. The purpose of this review is for conditioning only.

Long Term Impacts: Historic and Cultural Preservation

The site is close to the original shoreline (Meander Line, shown in City mapping systems), and there is a possibility that unknown resources could be discovered during excavation. Therefore, consistent with DPD Director's Rule [2-98](#) on SEPA Environmental Review and Archaeological Resources, and in order to ensure no adverse impact would occur to an inadvertently discovered archaeological significant resource, DPD conditions the project in accordance with the Director's Rule (condition #7).

SHORELINE AND SEPA CONDITIONS

Prior to Issuance of Master Use Permit:

1. The applicant shall show the addition of twenty three (23) additional native plant shrubs on the final plan set (total of 27 native plant shrubs). The shrubs shall be added to the area measuring 32 feet wide by 18 feet deep, located at northwest end of the peninsula adjacent to the S. Forest St. open water area. The shrubs shall be at least one (1) gallon in size, and planted four (4) feet on center. Location, spacing, and species shall be specified on the final plan set.

Prior to Issuance of a Construction Permit

2. The applicant shall obtain either a street use permit or street vacation approval for the proposed work in the area currently occupied by public right of way.
3. The applicant shall notify in writing all contractors and sub-contractors that proposal is subject to the following conditions:
 - a. All work shall protect surface and ground water on and adjacent to the lot and reflect agencies' requirements.
 - b. Best Management Practices (BMP) shall be employed. Include on the plans a written description of the BMP to be used during the proposed work. All deleterious material entering the water during the proposed work this material shall be removed immediately and disposed of appropriately. Any sinking debris entering the water shall be entered in a log and retrieved by a diver after construction.
 - c. An emergency containment plan is required for all toxic material kept on site, including on-site containment equipment and trained personnel.

The following conditions to be enforced during construction shall be posted at the site in a location on or near the property line that is visible and accessible to the public and to construction personnel from adjoining street right-of-way(s). The conditions will be affixed to placards prepared by DPD, to be issued along with the building permit set of plans. The placards shall remain posted on-site for the duration of the construction.

During Construction

4. All involved parties shall follow BMP.
5. If there is evidence of leakage of hazardous materials to the water, the use of such equipment shall be suspended until leaking is repaired.
6. Any treated wood shall be treated using BMP (creosote or pentachlorophenol prohibited).
7. If resources of potential archaeological significance are encountered during construction or excavation, the owner and/or responsible parties shall stop work immediately and notify DPD (Shelley Bolser, 206-733-9067) and the Washington State Archaeologist at the State [Office of Archaeology and Historic Preservation](#), Robert Whitlam, (360) 586-3080, or the current person in the position. The procedures outlined in Appendix A of Director's Rule [2-98](#) for Assessment and/or protection of potentially significant archeological resources shall be followed. The applicant(s) and/or responsible party(ies) shall abide by all regulations pertaining to discovery and excavation of archaeological resources, including but not limited to Chapters [27.34](#), [27.53](#), [27.44](#) RCW and Chapter [25.48](#) WAC, as applicable.

For the Life of the Project

8. BMP shall be followed.

Signature: _____ (signature on file) _____ Date: September 28, 2006
Shelley Bolser, Land Use Planner

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