



City of Seattle

Gregory J. Nickels, Mayor

Department of Design, Construction and Land Use

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**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF DESIGN, CONSTRUCTION AND LAND USE**

Application Number: 3005267
Applicant Name: Jeff Layton for Foss Shipyards
Address of Proposal: 660 West Ewing Street

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to allow the removal of two floating dry docks (14,800 square feet and 5,200 square feet) from Salmon Bay Marine Center and permanently relocate them to Foss Shipyards all within an environmentally critical area.

Seattle Municipal Code (SMC) requires the following approvals:

Shoreline Substantial Development Permit - To allow additional overwater coverage accessory to marine retail sales and services in the Urban Industrial Environment. (SMC 23.60.020 and 23.60.720)

SEPA – Environmental Determination pursuant to Seattle Municipal Code 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 Description

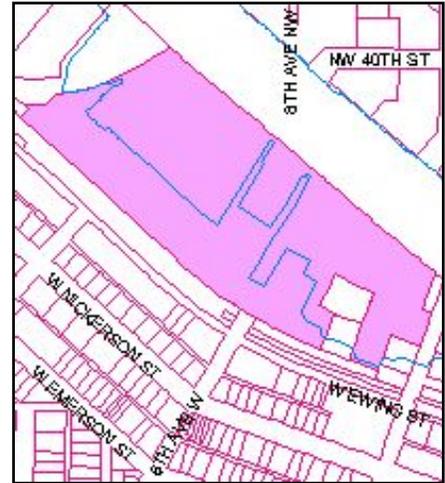
The Foss Maritime Company shipyard is located east of Salmon Bay on the Lake Washington Ship Canal and approximately 3/8 mile east of the Ballard Bridge. The marine sales and service use is bordered by West Ewing Street on the southwest, 11th Avenue West on the northwest, the Lake Washington ship Canal on the northeast, and 6th Avenue West on southeast. The property is within an Urban Industrial (UI) shoreline environment and is zoned General Industrial I with a 45-foot height limit (IG-1/U45).

Project Description

The proposed project is the permanent removal of an existing dry dock of approximately 11,319 square feet of overwater coverage, and permanently relocating two existing dry docks, totaling approximately 20,054 square feet, from Salmon Bay Marine, located at 2280 West Commodore Way on the west side of the Ballard Bridge, resulting in a net increase of overwater coverage of approximately 8,735 square feet.

Public Comment

The public comment period closed November 24, 2006. No comments were received related to the 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 the Shoreline Management Act.

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 seeks to protect 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 proposed improvements to Foss Maritime would not adversely impact the state-wide interest of protecting the resources and ecology of the shoreline, and the improvements would provide for the continued operation of a facility that is dependent upon its location in a shoreline of the state. The subject application is consistent with the procedures outlined in RCW 90.58.

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 ensuring 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, that also incorporates the provisions of Chapter 173-27, WAC. Title 23 of the Municipal Code is also referred to as the Land Use and Zoning Code. 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 which have also been set forth in the Land Use Code.

In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the relevant criteria set forth in the Land Use Code. The Shoreline Goals and Policies, part of the Seattle Comprehensive Plan, and the purpose and locational criteria for each shoreline environment must be considered. A proposal must be consistent with the general development standards of section 23.60.152, the specific standards of the shoreline environment and underlying zoning designation, any applicable special approval criteria, and the development standards for specific uses.

The proposed development actions occur on land classified as a waterfront lot (SMC 23.60.924) and is located within an Urban Industrial (UI) shoreline environment. The proposed improvements are associated with a tugboat services use and as such are a permitted use in the UI shoreline environment and the underlying IG-1 zone.

Shoreline Policies

All discretionary decisions in the shoreline district require consideration of the Shoreline Goals and Policies, which are part of the Seattle Comprehensive Plan's Land Use Element, and consideration of the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220. The policies encourage and support the retention and expansion of existing water-dependent businesses uses such as those at Foss Maritime (please refer to Land Use Policies LU254 and LU257-2). An area objective for this portion of the Lake Washington Ship Canal is to meet the long-term and transient needs of all Seattle's ships and boats -- including fishing, transport, recreation and military, while at the same time to protect and enhance migratory fish routes and feeding areas (please refer to Area Objectives for Shorelines of Statewide Significance, Policy LU269-2a). The purpose of the Urban Industrial (UI) environment as set forth in Section 23.60.220 C11 is to provide for efficient use of industrial shorelines by major cargo facilities and other water-dependant and water-related industrial uses. Views shall be provided mainly on public lands or in conformance with and area-wide Public Access Plan.

The proposed improvements to Foss Maritime would facilitate the continued and enhanced operations of the existing tugboat services use, as supported by both the purpose of the UI shoreline environment and the policies set forth in the Land Use Element of the Comprehensive Plan. The relocation of the existing dry docks from the Salmon Bay Marine site (in conjunction with the project proposals under MUP 3004608) will result in a net decrease of approximately 2,816 square feet of overwater coverage for the Lake Washington Ship Canal.

SMC 23.60.152 - Development Standards for all Shoreline Environments

These general standards apply to all uses in the shoreline environments. 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 are subject to the following:

- A. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as ... fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.
- B. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.
- C. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, vessel repair facilities, marine service stations and any use regularly servicing vessels....
- D. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
- E. All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catchbasins or settling ponds, interceptor drains and planted buffers.
- F. All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.
- G. All shoreline developments and uses shall control erosion during project construction and operation.
- H. 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.

- I. 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.
- J. 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.
- K. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.
- L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.
- M. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.
- N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.
- O. Navigation channels shall be kept free of hazardous or obstructing development or uses.
- P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corps of Engineers.

Long-term or use related impacts are also anticipated from the proposal and include: 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.

This project is proposed to occur in the nearshore environment in the Lake Washington Ship Canal, which is habitat of chinook salmon and other aquatic species. The project site serves as a migration corridor 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 pier 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.

Clearly identified impacts include an increase of overwater coverage and continued overwater coverage of habitat of a threatened species. Overwater coverage in the form of permanently moored dry docks reduces the amount and quality of natural habitat of juvenile chinook salmon and other aquatic species and provides habitat for introduced predator species of juvenile chinook.

Moorage and marine repair facilities have debris on the substrate caused by users accidentally and sometimes intentionally dropping debris and other deleterious material into the water. This debris degrades aquatic habitat. To meet SMC 23.60.152 H, I, J and L, all debris, including, but not limited to, boards and branches; rope, wire, nuts, bolts and pipe; tires and hoses; other small to medium sized metal; and any other material not normally found on the natural substrate, shall be removed. A Clean-up Documentation Plan that describes the procedures that will be used to ensure that all debris will be removed from the substrate at the site will be provided. Additionally, video imagery shall be submitted to the Department to document removal of all debris.

SMC 23.60.870 - 882 - Development Standards for UI Environment

All development must conform to the development standards in the UI Shoreline Environment. The two relocated dry docks do not exceed the 35 foot maximum height permitted on UI zoned lots. The UI Environment allows structures to occupy up to 100 percent of both submerged and dry-land lot area of a waterfront lot (SMC 23.60.874-A). No additional coverage to the dry-land portion of the site is proposed. There is an additional 8,735 sq. ft. of additional over water coverage which still leaves the overwater coverage well within the allowable limits of 100%. View corridors, setbacks, public access are not affected or required by the proposal.

Conclusion

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).

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). 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.

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

The applicant submitted an environmental checklist dated September 15, 2006. The information in the checklist, construction plans, information submitted by the applicant and the experience of the Department with the review of similar projects form the basis for this analysis and decision.

