



City of Seattle

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 Number:** 3002287  
**Applicant Name:** Dan Del Duca  
**Address of Proposal:** 9714 Rainier Avenue South

**SUMMARY OF PROPOSED ACTION**

Land Use application to allow construction of a 3-story 3,029 sq. ft. single family residence in an Environmentally Critical Area.

The following approvals are required\*:

**Environmentally Critical Area Exception** – to allow the construction of a single-family structure within the 25-foot residential set-back of the Shoreline Habitat Buffer (SMC 25.09.300).

**SEPA - Environmental Determination** - Chapter 25.05 SMC

\*(This project originally included a **Shoreline Conditional Use Permit** - to allow the construction of single-family structure partly over water in a Conservancy Recreation [CR] Shoreline Environment [SMC 23.60.034 and 365 and WAC 173-27-160.]. However, the proposal was revised to remove any overwater structure.)

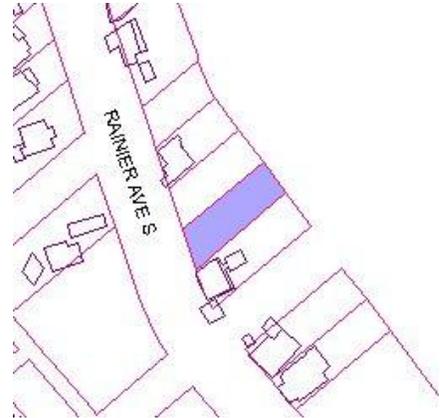
**SEPA DETERMINATION:**  Exempt  DNS  MDNS  EIS  
 DNS with conditions  
 DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

**BACKGROUND DATA**

Site and Area Description

The proposal site is located along the Lake Washington shoreline south of the Rainier Beach commercial district. The lot would be roughly rectangular except for its diagonal street property boundary along Rainier Avenue South. The total lot depth is 133-feet along the north property boundary and 151-feet along the south property boundary. However, most of the lot is

submerged beneath Lake Washington leaving approximately a 24-foot to 31-foot dry land lot depth along the north and south property boundaries respectively to the Ordinary High Water Mark (OHWM)(an approximately 1,200 square foot area). The lot is approximately 21-feet and 18-feet from the Rainier Avenue South sidewalk at its northwest and southwest lot corners respectively. This area is undeveloped. The ground slopes downward to the Lake approximately 8-feet between the Rainier Avenue South sidewalk and property boundary and approximately another 8-feet between the property boundary and the OHWM.



The shoreline of this lot and the adjacent lots to the north and south is comprised of a large piled rock wall. The lot to the south contains a single-family structure entirely on land. The lot to the north is similar in size to the subject lot and is vacant. The next lot to the north of that contains a single-family structure that extends over the Lake. The development pattern of single-family lake front structures continues to the north and south along this section of Rainier Avenue. The zoning is Single-Family 5000 (SF 5000) with similar Urban Residential (UR) and Conservancy Residential (CR) Shoreline Master Program Environmental designations to the subject site. One isolated area of Neighborhood Commercial (NC) zoning exists directly across the street from this site.

### Proposal Description

The applicant proposes to construct a 3 story approximately 3,029 sq. ft. single family structure with a one-car garage. The structure would extend from the street property line to the OHWM, except for the required north and south 5-foot side set-backs. Access between the sidewalk and structure is proposed by filling and paving this area for driveway, walkway, and vehicle turnaround, per plans (subject to SDOT final approval). The submitted plans indicate a dock is proposed under a separate MUP application (3009466). This proposal is exempt from the requirement for a Shoreline Substantial Development Permit per SMC 23.60.020.C.6 but must still comply with the regulations and development standards of this chapter.

### Public Comment

During the 30-day public comment period that ended November 3, 2006 no comments were received.

### **ANALYSIS – ENVIRONMENTALLY CRITICAL AREAS EXCEPTION**

The applicant has requested an Environmentally Critical Areas Exception approval to allow construction of a single family residence within the 25-foot residential set-back of the Shoreline Habitat Buffer (SMC 25.09.200.B.4.d.3).

**SMC 25.09.300. Environmentally Critical Area Exception.**

***A. An applicant for a City permit to develop real property that is located in an environmentally critical area or buffer may apply to the Director for an exception to modify environmentally critical area development standards, provided that an exception cannot be applied for to allow development or to obtain development credit under subsection 25.09.240E or to relocate lot lines under Section 23.28.030. Before an application for relief under this section will be accepted, the Director must determine that no other applicable administrative remedies in Chapter 25.09 or Title 23 will provide sufficient relief.***

The applicant proposes to construct one single family residence with one interior parking space within the 25-foot residential set-back of the Shoreline Habitat Buffer, with the exception of two 5-foot strips for the required side-yards along the lot's north and south property boundaries. The proposal does not include a request for development or development credit to subdivide the lot under 25.09.240.E, or relocate lot lines. Because the majority of the site's dry-land area is the approximately 1,200 square foot portion that comprises the residential set-back of the *Shoreline Habitat Buffer* no other administrative remedies are available in SMC 25.09 or Title 23 to allow development.

***B.1. An applicant requesting modification shall provide the Director with the following information:***

***a. Documentation showing that no other applicable administrative remedy in Title 25.09 or Title 23 will provide sufficient relief;***

The applicant has provided a survey showing that all dry land on the subject property is located within 24 to 31 feet of the Ordinary High Water Mark (OHWM). This leaves an approximately 36 square foot triangular area at the site's southwest corner with the ROW that is outside of the 25-foot residential set-back of the Shoreline Habitat Buffer. As described in subsection "A" above, there are no other applicable administrative remedies that would provide sufficient relief to allow reasonable development on the parcel.

***b. Technical studies and other data that describe the possible injurious effects of the proposed development on occupiers of the land, on other properties, on public resources, and on the environment. Possible injurious effects must be described even when the injurious effect will become significant only in combination with similar effects from other developments;***

The applicant has provided the following studies and information:

- Geotechnical report by Geotech Consultants, dated October 24, 2005
- Biological Evaluation by J.S. Jones and Associates dated January 2, 2006
- Joint Aquatic Resource Permit Application (JARPA) dated April 24, 2006
- Environmental Checklist dated April 25, 2006

These reports describe the possible effects of the development on the applicants who will reside at the property, on public resources, and on the environment.

The Geotechnical report examined site and adjacent ROW soil conditions and discussed limitations on site development due to these conditions if proper site disturbance and construction methods were not followed. It also makes geo-technical recommendations that must be followed to allow safe development of the site.

The Geotechnical report has been reviewed by DPD's geotechnical engineers in conjunction with an application for an ECA Exemption for this MUP and the associated construction application #6094885. DPD had determined that this proposal qualifies for a *Limited Steep Slope Exemption* because the *Steep Slope* comprising the site and adjacent ROW are the result of previous legal grading for the Rainier Avenue ROW. Further, the submitted geotechnical reports by Geotech Consultants, Inc demonstrate that developing in the *Steep Slope* will not result in adverse impacts on this site and adjacent sites. However, as is typical for ECA Limited Exemptions, all other ECA submittal, general, landslide-hazard, and development standards will apply for this development.

SMC 25.09.200.B establishes a minimum residential setback of 25 feet and a 100 foot buffer from the Ordinary High Water Mark, to provide migration corridors for fish listed by WDFW (Washington Department of Fish and Wildlife) as priority species and to protect endangered species habitat. The aquatic environment at this site provides habitat for Chinook salmon, which are listed as a threatened species under the Endangered Species Act.

DPD's shoreline / fisheries reviewer analyzed the submitted Biological Evaluation, JARPA information, and SEPA checklist. This analysis found that the proposed building design that proposes almost complete coverage of the 25-foot shoreline habitat set-back, with the exception of the two 5-foot strips for the required side-yards along the lot's north and south property boundaries, will result a loss of biological function provided by the Shoreline Habitat buffer 25-foot residential set-back and have an impact on threatened fish species. The increased impervious surface area removes the biological functions of the buffer with the result of an increase in pollutants, sediment transfer, and the increased temperatures of water runoff into the lake, per Best Available Science documents.

- c. Technical studies and other data by qualified persons showing that the proposed development will protect the occupiers of the land, other properties, public resources, and the environment to the same extent as the development standards that are proposed to be modified and explaining how this will occur;***

As described in "B.1.b" above, the submitted geo-technical report and ECA Exemption comments by DPD's geo-technical reviewer show that the proposed development can protect the occupiers of the land and other properties, subject to more in-depth review during construction.

Following the determination of likely significant injurious effects to the shoreline habitat and protected fish species by the proposed development, the applicant explored mitigation measures identified by DPD's shoreline / fisheries planner. These mitigation measures were the provision of an extensive green roof and side-yard re-vegetation (on site), off-site shoreline bulkhead removal, or shoreline re-vegetation within a quarter mile. On site mitigation of impacts is preferable.

After consultation with DPD's shoreline / fisheries planner an acceptable green roof and side-yard re-vegetation plan was created that meets the ECA Exception criteria. Inclusion and execution of this plan will be a project **Condition** as outlined under "D" below.

- d. Plans showing what can be developed in compliance with all environmentally critical area development standards and standards in Title 23, including the yard and setback standards for front and rear yards;***

As stated in SMC 25.09.300.B.1.a above, the applicant has provided a survey indicating that almost all dry land on the subject property is located within 25' of the OHWM. Consequently no development is possible, if developed in compliance with all applicable environmentally critical area development standards.

- e. An explanation with supporting evidence of how and why compliance with all environmentally critical areas development standards as shown on the plans required in subsection (d) would not permit any reasonable use of the property, including, but not limited to, submission of the following evidence:***

- 1) The date the applicant purchased the property or obtained the right to develop or use it;***
- 2) The price the applicant paid for the rights described in subsection (1); and***
- 3) Restrictions or conditions on use or development in existence when the applicant acquired the rights described in subsection (1).***

Information about the property purchase was supplied with the application. The current owner and applicant acquired the property in 2004.

The Environmentally Critical Areas Ordinance at the time of purchase by the current owner and applicant did not regulate, and consequently prohibit development within what the current ECA Ordinance designates as a *Shoreline Habitat Buffer* 25-foot residential set-back.

- 2. The Director may require the applicant to provide additional information prepared by qualified persons on the topics described in subsection B1.***
- 3. All technical studies and data shall be accompanied by sufficiently detailed information to allow the Director to evaluate it under the standards for scientific information set out in Washington Administrative Code (WAC) 365-195-905.***

The applicant has provided sufficiently detailed information. Where information was insufficiently detailed, the applicant was directed to provide additional information. The information provided has been reviewed as described above.

- C. The Director may modify or waive an environmentally critical areas development standard and/or the yard and setback standard for front or rear yards when an applicant demonstrates by clear and convincing evidence that strict application of the development standards would not permit any reasonable use of the property and that development undertaken pursuant to***

*the modified or waived standards would not cause significant injury to occupiers of the land, to other properties, and to public resources, or to the environment.*

The applicant has demonstrated by clear and convincing evidence that strict application of prohibition on development within the *Shoreline Habitat Buffer* 25 foot residential set-back would not permit any reasonable use of the property.

***D. The relief granted by reduction, waiver, or other modification of an environmentally critical areas development standard and of the yard and setback standards for front or rear yards shall be the minimum to allow reasonable use of the property. Preference shall be given to modifying or waiving the yard and setback standards for front or rear yards. In modifying a regulation, the Director may impose reasonable conditions that prevent or mitigate the same harm that the modified or waived regulation was intended to prevent or mitigate. In granting an exception to the development standards in Section 25.09.160 Wetlands, the Director shall apply the avoidance and mitigation standards in subsection 25.09.160.E when imposing any conditions.***

The Land Use Code allows a front yard that is the average of the front yards of the single-family structures on either side of the subject site and within 100-feet. Because of the similar topography and the siting of the adjacent single family structures the averaged front yard would possibly be approximately three feet. However, because of the narrow depth of the site's dry-land portion, requiring this approximately three foot front yard would unnecessarily and unreasonably restrict the footprint of any proposed structure.

Additionally, due to the site and ROW topography, access to the future structure's street level (its upper story) across the sidewalk-to-property line ROW will only be possible by filling the ROW sloped area and raising its grade to that of this upper story. To support this fill area a retaining wall must be constructed on the project site and approved by SDOT (Required for all work and structures in the ROW). SDOT has given preliminary approval to the proposal to fill in this area and construct the required retaining wall. However, SDOT seeks to minimize the construction of private structures in the ROW. In this situation there is no alternative to constructing the two end retaining structures in the ROW. The additional fill and likely additional retaining walls for a possible three-foot front yard would involve additional and unreasonable construction requirements when balanced with the negligible benefit of a small front yard that anyway would not be discernable next to the proposed filled ROW.

To mitigate the harm that building within the Shoreline Habitat Buffer 25-foot residential set-back would cause to the Shoreline Habitat Buffer and Lake Environment (outlined in B.1.b above) this project is ***Conditioned*** as follows:

- Best management practices (BMPs) shall 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 during any bulkhead repair 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.

- The project shall include landscape planting in each required five-foot side yard between the Rainier Avenue property boundary and the OHWM and the green (vegetated) roof plantings as shown on (Sheets L 1.0, 2.0, and 3.0 dated June 1, 2009 and date stamped at DPD Sept 29, 2009). The above cited landscape sheets include planting and maintenance requirements that, if followed, should assure the proposed plantings will survive and thrive.

To mitigate for the proposed impervious surface area in the Rainier Avenue ROW for the project's private access driveway, vehicle turn-around (required by the Seattle Department of Transportation for vehicle safety when exiting the site), and associated walking areas:

- Two landscaped areas (in planters) on either side of the vehicle turn-around shall be provided and conforming to DPD landscape development standards and included on the landscape and site plan sheets for the building permit. The width of these areas shall be the area remaining after providing the required vehicle turnaround area and associated pedestrian access.

***E. The Director's decision must be consistent with the scientific approach used by the City in developing the environmentally critical area development standard at issue.***

The decision has been ***Conditioned*** to allow development in the Shoreline Habitat Buffer 25-foot residential set-back provided a vegetated roof, at-grade re-vegetation and vegetation in the new ROW grade are included. The aim of these ***Conditions*** is to compensate for the lost biological functions determined by the Best Available Science that formed the basis for the Shoreline Habitat Buffer and reduced impervious requirements of SMC 25.09, Regulation for Environmentally Critical Areas. As such, they are consistent with that scientific approach.

## **DECISION – ENVIRONMENTALLY CRITICAL AREAS EXCEPTION**

The Environmentally Critical Areas Exception is **CONDITIONALLY GRANTED**. Conditions are listed at the end of this decision document.

## **ANALYSIS - SEPA**

The initial disclosure of the potential impacts from this project was made in the Environmental Checklist (dated April 25, 2006), and supplemental information in the project file submitted by the applicant. The information in the checklist, the supplemental information, 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: water quality impacts from soil erosion and air / greenhouse gas impacts. These impacts are not considered significant because they are temporary (Section 25.05.794, SMC). Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

The proposed construction work will take place adjacent to the waters of Lake Washington. For construction on dry land, the Stormwater Grading and Drainage Control Code, the geotechnical soils report from Geotech Consultants and dated October 24, 2005, the comments of the DPD geotechnical reviewer, and implementation of Best Management Practices should mitigate soil erosion impacts.

Construction material and/or debris and other deleterious material could enter the water during the proposed work. This contamination could lead to significant water quality and aquatic habitat damage. However the *ECA Exception Conditioning* above will provide adequate mitigation for these impacts so no SEPA Conditioning is required.

### Air Quality

Construction activities themselves will generate minimal direct impacts. However the indirect impact of construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas (GHG) emissions that adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from this project. No potential short term significant adverse impacts to air are anticipated and therefore air quality mitigation is not necessary.

### Long-term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal including: impacts to the ecological function of the Shoreline Habitat Buffer, protected fish species and increased carbon dioxide and other greenhouse gas (GHG) emissions primarily from increased vehicle trips but also the projects energy consumption. Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the City Energy Code that prescribes compliance levels for energy conservation and the Conditioning through the Environmentally Critical Areas Exception review process, as outlined above.

Per the SEPA Overview Policy presumption that the existing *Environmentally Critical Areas Ordinance* addresses anticipated long term environmental impacts, the *Conditional Approval* of this project through this process is adequate to achieve sufficient mitigation. However, further discussion of impacts to the Shoreline Habitat Buffer and Lake Environments and the anticipated GHG affects is warranted.

Plants and Animals

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit Lake Washington 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.*

As provided by SMC 25.05.660, and 25.05.675 N 2 c, the lead agency may specify mitigation. The applicant has included mitigation measures in the project to offset the impacts of the proposed work (as described in the Environmental Checklist, the Biological Evaluation and the JARPA), and DPD has imposed **Conditions** on this project as described in the ECA Exception section above. These mitigation measures and conditions include a vegetated "green" roof that will serve to reduce water quality and stormwater runoff impacts of this project as well as revegetation in both side yards up to the shoreline with native vegetation, which will increase the allochthonous input of insects and detritus to Lake Washington providing food for juvenile salmonids and nutrients for other aquatic organisms. Based on these ECA **Conditions** no SEPA conditioning is necessary.

Air Quality

The number of vehicular trips and building energy usage associated with a single-family structure is not expected to result in substantial increases in carbon dioxide and other greenhouse gas emissions that adversely impact air quality and contribute to climate change and global warming. Since no potential long term significant adverse impacts to air quality are anticipated, no mitigation is necessary.

Summary

In conclusion, several long-term effects on the environment may result from the proposed development, however by following the required **Conditions** of the related ECA Exception, these effects will be mitigated.

**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.

- Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.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).

**ENVIRONMENTALLY CRITICAL AREAS EXCEPTION - CONDITIONS**

Prior to MUP Permit Issuance

1. Update Plan Sets 1, 2, and 3 to include previously and separately submitted Sheets L 1.0, 2.0, and 3.0 (dated June 1, 2009 and DPD date stamped Sept 29, 2009). These sheets shall include the following:
  - a. Two landscaped areas on either side of the vehicle turn-around (conforming to DPD landscape development standards). The width of these areas shall be the area remaining after providing the eight to ten foot wide vehicle turnaround.
2. Update Plan Sets 2 and 3 to include “redlines” shown on Plan Set 1.

During Construction

3. Best management practices (BMPs) shall be employed throughout construction to decrease the probability of sediment flow to the Lake and entry of debris or other deleterious material from entering the water during the proposed work. A boom should be deployed around the construction area during any bulkhead repair 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.

Prior to Building Permit Final

4. Submit a copy of Attachment “A” of DPD Director’s Rule 6-2009, “Landscaping Checklist for Non-Green Factor Projects”.

For the Life of the Project

5. The owner(s)/responsible party(s) shall maintain the at-grade and roof-top plantings per the approved plans. If plant material does not thrive as expected for its variety, or dies, these must be replaced within a reasonable period of time in keeping with the intent of said landscaping / green roof as described in the MUP decision.

**SEPA - CONDITIONS**

None.

Signature: \_\_\_\_\_ (signature on file) Date: June 17, 2010  
Art Pederson, Land Use Planner  
Department of Planning and Development

AP:lc

K:\Encyclopedia of Decisions\3002287 Dec.DOC