



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 Number: 3004966
Applicant Name: Matt Parent for GRE Northlake LLC
Address of Proposal: 1341 North Northlake Way

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to construct a 156.25 ft. long 2,983 sq. ft. pier supported by new steel piling and construction of an 85 lineal ft. concrete ecology block bulkhead with 13 cubic yards of landfill. Project includes removal of a minimum of 60 to a maximum of 93 existing wooden piling, dolphins and in-water metal debris.

*Note: The project description has been revised from the original notice of application.

The following approvals are required:

Shoreline Substantial Development Permit – to allow the construction of a commercial pier with steel pilings, concrete bulkhead and in-water debris removal in an Urban Maritime (UM) Shoreline Environment – (Section 23.60.720, Seattle Municipal Code (SMC)).

Shoreline Special Use – to allow construction of a concrete bulkhead and 13 cubic yards of landfill in an Urban Maritime (UM) Shoreline Environment – (Section 23.60.722, SMC).

SEPA - Environmental Determination - (Chapter 25.05, SMC)

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

BACKGROUND DATA

Existing Conditions

This approximately 62,921 square foot (sq. ft.) site is situated south of North Northlake Way on the north shore of Lake Union. The property is zoned Industrial Commercial (IC-45) within the Urban Maritime (UM) shoreline environment. Development on the site consists of the following structures and uses: a floating boat shed; a boat yard; docks and a three-story with basement commercial building with accessory surface parking consisting of 14 parking stalls. This 46,234 sq. ft. commercial building includes vessel repair on the basement level; marine retail sales and service on the first floor, and accessory storage (accessory to the water related/water dependant uses on site) on the two remaining upper floors. The existing building and attached docks are partially situated over Lake Union. Also, this property includes existing dock extensions encroaching waterward into State-owned property. The owner leases this submerged area from the Department of Natural Resources (DNR) (#9507).

The site is accessed via three curb cuts along North Northlake Way and an access easement (King County Recording (KCR) #20071010001464) situated along the subject site's westerly boundary line also via North Northlake Way. North Northlake Way is an Arterial street, partially improved with curbs, sidewalks and gutters on one side of the street.

The site's topography is relatively flat with an upward sloping condition from south to north resulting in an 8' grade change occurring at the retaining wall condition along the site's north boundary line. This site has an identified Environmentally Critical Area (ECA)-Fish and Wildlife Habitat Conservation Areas.

Area Development

Adjacent zoning surrounding the site is also IC-45. Development surrounding the site consists mainly of marine-related uses and commercial uses. The development site is bounded to the south by the waters of Lake Union. To the east is City-owned property (Waterway 21) controlled by Seattle Department of Transportation (SDOT). To the west of the subject site is boat sales and boat moorage. Directly across North Northlake Way and just north of the site is a construction office building. Both Gasworks Park and the Burke Gilman Trail are north and southeast respectively of the subject property.

Proposal

The proposal involves three primary components: removal of existing docks, timber piling and in-water debris; construction of a new dock supported by steel piling; and, construction of a concrete bulkhead.

Existing conditions at the subject site include an existing wooden dock and traces of a dilapidated dock exist along the southern shoreline edge and eastern shoreline edge of the subject site respectively. Additionally, several creosote treated and non-treated timber piles, dolphins, and in-water debris are situated onsite adjacent to and underneath the existing docks; as well as, located in Waterway 21. The proposal includes the removal of the wooden dock; remains of the dilapidated dock; 69 to 93 timber piles, 329 sq. ft. of iron beams; and in-water concrete and metal debris.

As mentioned above, one aspect of this proposal includes the construction of a 156.25 ft. long, 2,983 sq. ft. pier which is proposed to be erected located along a portion of the eastern and southern edges of the site. This "L" shaped pier is planned to be a maximum 12.33' in width for the first 108' and have a 48.25' x 22' x 42.33' x 43.17' configuration at the south end of the pier. Approximately 24 supporting epoxy-coated steel piles ranging in size from 12" to 16" in diameter will be installed supporting decking comprised of "Thru-Flow" grating. The bottom of the new pier would be installed a minimum 18" above the ordinary high water (OHW) mark. Per the applicant, no increase in lot coverage is proposed because the proposed new dock will be erected in a footprint similar to the existing piers to be removed.

The project also includes construction of approximately 85 lineal ft. concrete bulkhead using 1,071 cubic yards of concrete ecology block in order to correct an existing eroding condition occurring along the site's southwesterly shoreline area. 13 cu. yds. of landfill will be placed landward of the proposed ecology block bulkhead. Clean soil and fish gravel mix for riparian plantings waterward of the proposed bulkhead, some of which is below OHW, is proposed.

Public Comment

The required public comment period ended June 9, 2006. During the public comment period, DPD received no written comments regarding this proposal.

Additional Information

In 1999, a portion of a retaining wall supporting the street right-of-way collapsed onto the property located at 1341 North Northlake Way and was the subject of an Emergency Shoreline Exemption obtained by the applicant. Upon inspection, DPD issued a notice of violation (NOV) (#BC211177) for the extension of the wall into the property and for paving the boatyard. Due to the un-permitted activity occurring within the shoreline district, the owner was required to obtain a shoreline substantial development permit prior to acquiring a construction permit for the unauthorized construction.

In 2002, the owner at the time (Woeck Family Limited Partnership) submitted a Master Use shoreline substantial development and SEPA application (#2202646) for the following description of work: *Shoreline Substantial Development Permit to repair and replace an existing 8.5 foot high by 100 foot long retaining wall. Project includes paving 7,250 square feet of existing storage for boatyard.* A decision related to this application was published by DPD on January 19, 2004. This decision included the following two conditions that require action before the Master Use Permit (MUP) may be issued:

The owner(s) and/or responsible party(s) shall:

- 1. Remove all the abandoned piles, concrete debris, logs, cable, and steel material from the open water area that is on the south and east sides of the subject property.*
- 2. Recycle or dispose of the material removed from the water at the subject site at the appropriate upland facilities.*

As a result of the owner's failure to obtain appropriate permitting for the clean up work for various reasons (change in property ownership and consultants), the City of Seattle filed a lawsuit (Civil Case No. 01-110) against the owner. Ultimately, both the City and the owner entered into a settlement agreement (dated July 9, 2004) which outlined the following two of approximately five terms:

- a) *Defendants will proceed with the application for a permit for dock repairs, currently in process under project number 2402464, in order to obtain an issued permit authorizing those repairs.*
- b) *Defendants will complete all work identified in Conditions 1 & 2 of the Director's Decision for Shoreline Substantial Development Project No. 2202646 (retaining walls) within 180 days of issuance of a permit under Project No. 2402464 (dock repair), subject to compliance with in-water construction work windows contained in applicable State and federal permits.*

Per the settlement agreement, the removal of the underwater debris was designed to be done in conjunction with the dock repair work to be authorized under MUP application #2402464. However, the dock repair application (#2402464) was converted by DPD Staff to MUP application #3004966. Therefore, this body of work will be examined and addressed in this report.

The required in-water debris clean up and proposed removal of existing piling and dolphins will necessitate work within the right-of-way (Waterway 21). As a condition of this application, the owner will be required to obtain appropriate permitting from Seattle Department of Transportation (SDOT).

The U.S. Army Corps of Engineers has issued a Provisional 404 permit for this project. The provision requires compliance with Ecology 401/CZM requirements and completion of SEPA review. In 2004, Ecology notified the applicant that it waived 401/CZM jurisdiction for this project. Per the applicant, ESA Section 7 consultation requirements have been satisfied and the current shoreline mitigation plan has been approved by the Corps, NOAA Fisheries, USFWS and WDFW. The applicant has submitted a Biological Evaluation, Biological Evaluation Addendum and Biological Evaluation Second Addendum that comprehensively assess any impacts to fish species, wildlife, water quality and shoreline habitat. A Spill Prevention, Control and Countermeasures Plan (SPCC) dated July 11, 2008 has also been submitted to DPD. It is anticipated that the WDFW Hydraulic Project Approval will be issued once DPD issues its SEPA determination.

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 and other jurisdictions with shorelines adopted a local shoreline master program, codified in the Seattle Municipal Code 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.

The proposal is subject to the Shoreline Policies of SMC 23.60.004 because the site is located within the shoreline district and the cost of the project exceeds \$2,500.

The proposed commercial pier supported by steel pilings, in-water debris removal and concrete ecology block bulkhead has been designed to ensure minimum impact to the public health, land, and the waters of the state, and their aquatic life. The layout of these structures will not interfere with the public rights of navigation and corollary rights, thus providing for the management of the shorelines by planning for and fostering all reasonable and appropriate uses. Therefore, the subject application 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 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 SMC 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 requirements use permit) or conditioning that is necessary to protect and enhance the shorelines area (SMC 23.60.064).

Pursuant to SMC 23.60.064C, in evaluating whether a development which requires a substantial development permit, conditional use permit, variance permit or special use authorization meets the applicable criteria, the Director shall determine that the proposed use: 1) is not prohibited in the shoreline environment and the underlying zone and; 2) meets all applicable development standards of both the shoreline environment and underlying zone and; 3) satisfies the criteria for a shoreline variance, conditional use, and/or special use permits, if 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 subject property is located within an Urban Maritime (UM) shoreline environment and is classified as a waterfront lot (SMC 23.60.924). The policies encourage and support the retention and expansion of existing water-dependent and water-related business uses such as those at the subject site (please refer to Land Use Policies LU231 and LU232). The citywide area objective for Shipbuilding, Boat Building and Repairs industries is to maintain a critical mass of facilities in Seattle in order to meet the needs of the diverse fleets that visit or have home port in Seattle, including fishing, transport, recreation and military vessels, while at the same time to protect and enhance migratory fish routes and feeding areas (please refer to Policy LU257). Additionally, an area objective for this portion of the Lake Union is to "retain the working character of Lake Union by reserving those areas of the lake's shorelines that are suitable for water dependent uses for the use of marine businesses" (please refer to Policy LU269). 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.

The proposed improvements to the subject property would facilitate the continued and enhanced operations of the existing boatyard, vessel repair and marine retail sales and services uses, as supported by the both the purpose of the UM shoreline environment and the policies set forth in the Land Use Element of the Comprehensive Plan. The erection of the concrete ecology block bulkhead; in-water debris removal; and replacement of the dilapidated wooden piers with a grated pier supported by steel pilings are designed to enhance the migratory fish routes and feeding areas.

Development Standards

The proposal to remove existing docks, timber piling and in-water debris; construct a new dock supported by steel piling; and, construct a concrete bulkhead is located in the UM shoreline environment. The proposed actions are therefore subject to:

1. *the general development standards for all shoreline environments (SMC 23.60.152);*
2. *the development standards for landfill and bulkheads (SMC 23.60.184 ,23.60.188 and 23.60.032);*
3. *the development standards for the UM environment (SMC 23.60.750); as well as*
4. *the development standards for Industrial Commercial zones (SMC 23.50).*

1. 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 (BMPs) for the specific use or activity, in order to prevent degradation of land or water. The following general development standards are relevant to the proposed project:

- 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 paving and berming of drum storage areas, 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 with petroleum product capacities of ten thousand five hundred (10,500) gallons or more.
- 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 leakproof 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, catch basins 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.

General development standards (SMC 23.60.152) state that BMPs 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 (22.800) places considerable emphasis on improving water quality. Also, a Biological Evaluation (BE) Report (dated August 20, 2003), Biological Evaluation Addendum (dated December 8, 2003) and Second Addendum (dated March 16, 2004) collectively document specific application of BMPs and measures related to construction and grading activities, water quality/stormwater, noise grading, timing of in-water work, impacts to fish and wildlife, erosion, vibrations, debris management, and containment source BMP's. DPD has reviewed the BE reports, as well as a Spill Prevention, Control and Countermeasures Plan (SPCC) and debris removal monitoring plan and has deemed them appropriate. In order to ensure that BMPs are followed a condition will be imposed pursuant to Shoreline and SEPA authority to require the applicant/owner to notify contractors and subcontractors of the conditions of this permit.

The proposed project's design 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.

2. Development Standards for Specific Uses (SMC 23.60.184, 23.60.188 and 23.60.032)

Development standards for landfills are found at SMC 23.60.184 and development standards for bulkheads are found at SMC 23.60.188.

The proposed bulkhead complies with SMC 23.60.188. The bulkhead is accessory to a nonresidential use and is necessary for the continued use of the facility as a marine retail sales and service business and vessel repair facility. Per the applicant, natural beach protection is not a practical alternative for preventing erosion at this location due to the prevailing southerly winds and waves and this alternative is incompatible with the permitted use of this facility as a vessel repair/boat yard operation. This proposed 85' long bulkhead situated along the site's southwesterly shoreline edge does not detrimentally direct littoral drift, waves, currents or sediment to other shorelines.

The 13 cu. yds. of fill proposed behind the bulkhead complies with the development standards set forth in SMC 23.60.184. No adverse water quality impacts are expected because the fill will be isolated behind the bulkhead. The eroded area where the fill will be placed landward of the ecology block wall does not exceed 100'. The industrial shoreline in this area is characterized by bulkheads and the fill will not substantially increase interference with a system of beach accretion and erosion.

Pursuant to SMC 23.60.722, bulkheads necessary to prevent erosion and landfill which creates dry land when the dry land is necessary to a water-dependent or water-related use may be authorized on waterfront lots if the special use criteria in SMC 23.60.032 are satisfied. The analysis of these criteria is addressed further in this report.

3. Development Standards for the UM Environment (SSMP 23.60.750)

The development standards set forth in the UM shoreline environment relate to height, lot coverage, view corridors, public access and development between the Pierhead Line and the Construction Limit Line in Lake Union. The submitted plans demonstrate that the proposal conforms to all of the development standards for the UM environment.

4. General Development Standards for Industrial Commercial Zones (23.50 SMC)

The proposal has been reviewed by DPD and meets the applicable development standards of the IC-45 zone.

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

Summary

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 of the Seattle Shoreline Master Program.

The project, as conditionally proposed, meets the specific standards for development in the UM environment. It also conforms to the general development standards, as well as the requirements of the underlying zone, therefore it 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 with specific development standards of the underlying zones, and having established that the proposed use and development are consistent with the Seattle Shoreline Program, the proposal, as conditioned below, is hereby approved.

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 – SHORELINE SPECIAL USE

SMC 23.60.722 allows the erection of shoreline protective structures (bulkheads necessary to prevent erosion) and landfill (which creates dry land when the dry land is necessary to a water-dependent or water-related use) as special uses in the UM environment and are subject to the approval criteria set for in SMC 23.60.032 as follows:

- A. *That the proposed use will be consistent with the policies of RCW 90.58.020 and the Shoreline Policies;*

The policies of the RCW 90.58.020 provide for management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses, while allowing development in a manner which will promote the public interest. It states, in part: permitted uses in the shorelines of the state 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 subject site is considered a waterfront lot pursuant to SMC 23.60.924. The Code states that shoreline protective structures such as bulkheads are permitted to support a water-dependent/water-related use. Additionally, landfill which creates dry land is also allowed to repair an erosion condition. Thus, this proposal is consistent with the shoreline policies and is not expected to interfere or impact the purpose of the UM environment.

- B. *That the proposed use will not interfere with the normal public use of public shoreline;*

The project action is the erection of a bulkhead in order to negate an existing erosion condition. The project area is highly industrial in nature, and shoreline uses are primarily associated with the private business. Public access and boating just of the site is unencumbered. Upon completion of construction, public access to shoreline areas will be unchanged.

- C. *The proposed use of the site and design of the project will be compatible with other permitted uses within the area;*

The proposed bulkhead and landfill is located along an industrial working waterfront of Lake Union. Development surrounding the site consists mainly of marine-related uses and commercial uses.

- D. *That the proposed use will cause no unreasonably adverse effects to the shoreline environment in which it is to be located; and*

The project would not convert any undeveloped areas within the shoreline environment from their natural state, nor would any permanent structures be sited on land not already devoted to industrial uses. The proposed bulkhead design includes vegetation comprised of native plants a

fish mix waterward of the proposed wall. This design element was integrated to mitigate possible future adverse effects to the shoreline environment.

E. *That the public interest suffers no substantial detrimental effect.*

The public interest is not expected to suffer substantial detrimental effect. Therefore, the proposal meets the criteria for Special Use approval.

DECISION – SPECIAL USE APPROVAL

The proposed action is **CONDITIONALLY GRANTED.**

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated May 4, 2006. Due to a change in project scope, the applicant submitted a revised environmental checklist dated June 8, 2008 to DPD. The information in the checklist and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SSMC 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 (SSMC 25.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-term Impacts

The following temporary or construction related impacts are expected: water impacts (disturbance of migrating fish by sedimentation and clouding due to pile driving, in-water debris removal); 2) noise impacts (also due to pile driving and bulkhead construction). These impacts are not considered significant because they are temporary (SMC Section 25.05.794). Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

Water Impacts

This proposal consists of construction activities which might potentially result in water quality degradation. These impacts are substantially mitigated by the conditions required by DPD, other regulatory agencies (Washington Department of Fish and Wildlife, U.S. Army Corp of Engineers) and the requirements of the Seattle Shoreline Master Program. No further mitigation under SEPA is warranted.

Noise Impacts

Noise impacts associated with pile driving would likely affect resident fish on Lake Union. Due to this disturbance, the limitations of the Noise Ordinance are found to be inadequate to mitigate the potential noise impacts. SEPA Overview Policy (SMC 25.05.675 B) allows further mitigation for habitat disruption caused by construction noise and is warranted.

Compliance with these applicable policies and ordinances will be adequate to achieve sufficient mitigation and further mitigation by imposing specific conditions is not necessary for these impacts. Other city codes and/or ordinances apply to the proposal and will provide mitigation for the environmental health impacts.

Underwater Habitat

Disturbance of the lake sediments is expected since most work will be done in water. There is the potential for construction debris to enter the water during construction, so care will have to be taken to prevent this from occurring. In addition to the requirements set forth by SSMP 23.60.152, the general recommendations cited in a Spill Prevention, Control and Countermeasures (SPCC) plan shall also be followed as conditioned below.

Greenhouse Gas Emissions

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacturing of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant.

Long-term Impacts

Long-term or use related impacts are anticipated from the proposal and include: increased overwater coverage, increased number of pilings, 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 properly mitigated, resulting in a determination of non-significance. Therefore, the long-term impacts merit more detailed discussion in relation to the need for mitigation.

Greenhouse Gas Emissions

Emissions from the generation of greenhouse gases due to the increased energy and transportation demands may be adverse but are not expected to be significant due to the relatively minor contribution of emissions from this specific project. The other impacts such as but not limited to, increased ambient noise, and increased demand on public services and utilities are mitigated by codes and are not sufficiently adverse to warrant further mitigation by condition.

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.*

This project is proposed to take place in Lake Union, 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.

Clearly identified long-term impacts on juvenile Chinook salmon and the aquatic environment include the continued existence of a bulkhead, an increase in over-water coverage and the presence of piles in the habitat of a threatened species. Over-water coverage and piles impact the quality of natural habitat of juvenile Chinook salmon by creating shading and providing structure for small mouth bass. Additionally, bulkheads tend to create deeper water habitat caused by erosion and water action at the bulkhead. When juvenile Chinook have no shallow water habitat, which provides refuge from predators, during their out-migration they are more susceptible to predation by larger fish; therefore, this decreases their survival.

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 and DPD has imposed conditions on this project. These mitigation measures and conditions are listed below.

1. Installing decking material (Thru-Flow) that would ensure minimal shading effect.
2. Placing the bottom of the new pier 18" above OHW to increase the amount of light that reaches underneath the pier.
3. The replacement dock along the eastern and southern frontages will not be extended beyond the historic and existing dock footprints.
4. Removal of all abandoned debris and concrete rubble not necessary for bank stability from the water and along the shoreline.
5. Removal of all existing piles not to be used for the new pier structure.
6. Install clean soil and fish gravel mix for riparian plantings waterward of the proposed bulkhead.

Each of these mitigation measures and conditions are believed to minimize impacts on juvenile salmon habitat at the site and improve the aquatic habitat for juvenile Chinook salmon and other

species. Collectively these measures will eliminate the dark areas that may exist under the dock and eliminate structure in the shallow water habitat, which should in turn allow the juvenile salmon to remain in the shallow water during their migration and reduce the juvenile Chinooks' vulnerability to predation. Locating the bulkhead at or above OHW will minimize impact of the bulkhead caused by wave action. Additionally, terrestrial vegetation adds detritus material to the aquatic environment, which benefits the salmon through the food web. Terrestrial vegetation also directly benefits salmon by providing a food source in the form of terrestrial insects that drop into the water. Therefore, the riparian vegetation planted along the shoreline will increase the allocation of insects and detritus to the aquatic environment providing food for juvenile salmon and nutrients for other aquatic organisms.

Summary

In conclusion, several effects on the environment may result from the proposed development. However, by following the proposed mitigation measure, these effects will not be significant. The conditions imposed at the end of this report are intended to mitigate specific impacts identified in the foregoing analysis, to control impacts not adequately regulated by codes or ordinances, per adopted City policies.

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 requirements 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. 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).

SEPA AND SHORELINE CONDITIONS

Prior to Issuance of a Construction Permit

The owner(s) and/or responsible party(s) shall:

1. A Best Management Practices (BMP) Plan to be included on the plan set. The BMP plan shall indicate how construction will take place to ensure that no debris or deleterious material shall enter the water through the duration of the proposed work.
2. The spill prevention and response procedures identified in the Spill Prevention, Containment and Countermeasures Manual (SPCC) shall be provided on the construction plan set.

3. A Vegetation Monitoring and Maintenance Plan should be included on the construction plans.
4. The Debris Removal Monitoring Plan should be included on the construction plans.
5. Obtain the necessary permitting from Seattle Department of Transportation (SDOT) to allow future in-water activity (debris, timber piling and dolphin removal) within Waterway 21.

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 Commencement of Construction

The owner(s) and/or responsible party(s) shall:

6. The terms identified in Settlement Agreement shall be followed. Please contact the DPD Code Compliance Coordinator (Jill Vanneman, 733-9062) to discuss an appropriate plan of action in addressing these terms.
7. Construction activity will be restricted to timing limitations set forth in the Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW).
8. No toxic materials, petrochemicals and other pollutants shall enter the surface water during the proposed construction 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.
9. Personnel shall be trained in the plans and procedures for the prevention, containment and clean-up of toxic material.

During Construction

10. The owner(s), builder(s), or responsible party(s) shall follow the Best Management Practices and the Spill Prevention, Containment and Countermeasures (SPCC) plans developed to prevent debris and other deleterious material from entering the water during construction.
 - a. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.

- b. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.
11. Equipment using oil, gasoline, or diesel used on site shall be checked daily for evidence of leakage, if evidence of leakage is found, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
12. No treated wood shall be used in the decking material.
13. No fascia shall be installed because it blocks natural light from reaching under the pier.
14. Grating of the deck of the pier shall occur per plans.
15. If treated wood is proposed for other structures, this wood shall be professionally treated and completely cured using the best management practices developed by the Western Wood Preservers Institute (<http://www.wwpinstitute.org/>) before this wood is used for this project.
16. Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water.

For the Life of the Project

17. Vegetation monitoring is required by the applicant to ensure 80% or greater survival of the vegetation planted at this project site after five (5) years from the time of planting.

Signature: _____ (signature on file) Date: December 11, 2008
Tamara Garrett, Land Use Planner
Department of Planning and Development

TG:bg

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