



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: 3007463
Applicant Name: Don Benson, URS Corporation
Address of Proposal: 600 Westlake Avenue North

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to allow excavation of 30,000 cubic yards for soil removal and remediation. Review includes below grade remediation of contaminated soil under adjacent Valley and Mercer Streets. Existing structures and tanks to be removed and excavated areas to be backfilled with structural fill.

The following approvals are required:

Shoreline Substantial Development Permit: to allow excavation of 30,000 cubic yards of contaminated soil in the Urban Stable (US) shoreline environment pursuant to Seattle Municipal Code 23.60.600.

SEPA - Environmental Determination - Chapter 25.05 SMC

SEPA DETERMINATION: Exempt DNS MDNS EIS

 DNS with conditions

 DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

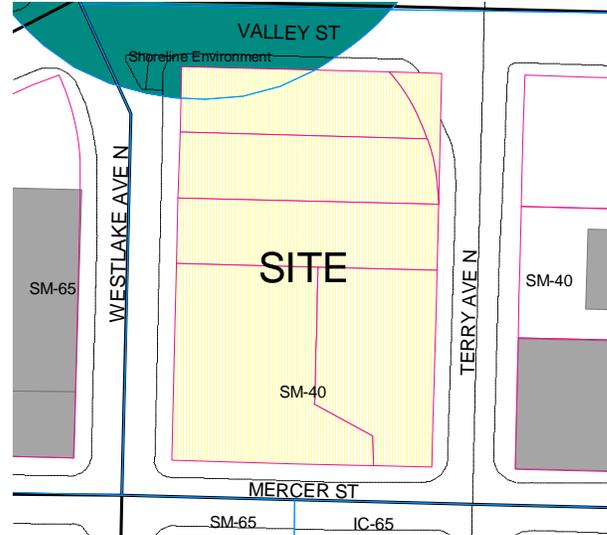
BACKGROUND DATA

Site Location and Description

The proposal site is a full block of nearly two acres comprised of six parcels bounded by Valley Street, Terry Avenue N, Mercer Street and Westlake Avenue N.

Zoning

The site has Seattle Mixed zoning with a 40 foot height limitation (SM-40) and the Urban Stable (US) Shoreline Master Program designation. To the east the SM-40 zoning continues. To the west and southwest the zoning changes to SM-65. To the southeast the zoning is Industrial Commercial with a 65 foot height limitation (IC-65).



Area Development

West of the site is a Land Rover dealership in the historic William O. McKay Ford Building which has been determined to be eligible for listing on the National Register of Historic Places. To the north land owned by the City of Seattle is being developed into the South Lake Union Park. To the east and south are commercial businesses with associated parking.

Proposal Description

The proposal involves demolition of the existing service station and excavation of the majority of the site to a depth of 15-18 feet (removal of approximately 30,000 cubic yards of soil) to remove soils containing petroleum hydrocarbon concentrations in excess of Model Toxics Control Act (MTCA) Method A Cleanup Levels. The removed soils will be taken to an approved off-site disposal facility and the excavations backfilled with clean imported structural fill. The City Investor's property will be paved at the completion of the project, the Conoco Phillips site will be left with a crushed rock surface.

In addition, in situ trenches for an air sparge/soil vapor extraction system are proposed underneath Valley and Mercer Streets. Remediation within the Westlake and Terry Avenue rights-of-way occurred in a previous phase. The Valley and Westlake rights-of-way will be restored with frontal improvements including sidewalks. Sidewalks on Mercer Street will be restored if they are damaged during construction. There are no sidewalks on Terry Avenue and none are proposed.

The northwest corner of the site is within the Lake Union US shoreline environment, triggering the requirement for a Shoreline Substantial Development Permit. SEPA Environmental Review is triggered by the plan to grade more than 500 cubic yards of soil.

Public Comment

No comments were received during the comment period, which ended on December 7, 2007.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads:

A substantial development permit shall be issued only when the development proposed is consistent with:

- A. The policies and procedures of Chapter 90.58 RCW;*
- B. The regulations of this Chapter; and*
- C. The provisions of Chapter 173-27 WAC*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and Shoreline Management Act.

A. The Policies and Procedures of Chapter 90.58 RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. The Regulation of Chapter 23.60

Chapter 23.60 of the Seattle Municipal Code is known as the “Seattle Shoreline Master Program.” In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SSMP 23.60.030 (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use permit) or conditioning that is necessary to protect and enhance the shorelines area (SSMP 23.60.064). In order to obtain a shoreline substantial development permit, the applicant must show that the proposal is consistent with the shoreline policies established in SSMP 23.60.004, and meet development standards for all shoreline environments established in SMC 23.60.152 as well as the criteria and development standards for the shoreline environment in which the site is located, any applicable special approval criteria and the development standards for specific uses.

The site is classified as an upland lot (SMC 23.60.924). The shoreline designation for the site is Urban Stable (US) (SMC 23.60.600).

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan’s Land Use Element and the purpose and location criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district. The purpose of the US Environment is stated in SMC 23.60.220 C.7. Because this application will not result in a permanent use on the site, but instead a site that is clean and ready for subsequent development, these more specific regulations do not affect the proposed scope of work.

SMC 23.60.064 - Procedures for Obtaining Shoreline Substantial Development Permits

This application has followed the procedural requirements for a Master Use Permit as specified in subsection A. SMC 23.60.064 also 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).

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environment. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. The standards applicable to the proposed shoreline development are as follows:

- 1) 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.

The City's Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. In conjunction with this effort a Director's Rule, 16-2000, was developed to apply best management practices (BMPs) to prevent erosion and sedimentation from leaving construction sites or where construction will impact receiving waters. The intent of this project is to remediate groundwater and soil contamination.

- 2) Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.

The applicant has stated that contaminated soil will be taken off site to an approved disposal location using BMPs such as minimizing soil drop heights and covering trucks during transport.

- 3) 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.

This will be enforced during construction.

- 4) 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.

The applicant has stated that stormwater runoff, as well as groundwater from dewatering within the excavation area, will be treated prior to discharge into City facilities.

- 5) All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.

Due to the contamination issues the City Investor's property will be paved and the Conoco Phillips site will be left with a crushed rock surface at the close of the excavation and fill activities.

- 6) All shoreline developments and uses shall control erosion during project construction and operation.

The City has regulations in place to accomplish this, namely the Stormwater, Grading and Drainage Control Code (SMC 22.800) and the best management practices (BMPs) in Director's Rule 6-93.

- 7) 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.

The extent of the proposed excavation has been dictated by the depth of contamination. No vegetation will be cleared with this proposal as street trees along Westlake were removed during the first phase of remediation and no formal landscaping exists on site. The remediation work has been designed by URS Corporation, a consultant firm with geotechnical and environmental expertise. The site will be left bare for future redevelopment.

- 8) All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.

The purpose of this remediation action is to enhance the public health and safety by removing gasoline contamination.

- 9) 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.

The City has regulations in place to accomplish this, namely the Stormwater, Grading and Drainage Control Code (SMC 22.800) and the best management practices (BMPs) in Director's Rule 16-2000.

The proposal as designed would ultimately improve the quality of surface and ground water on and adjacent to the site on a long-term basis. Therefore the project would carry out the spirit and purpose of and comply with the Seattle Shoreline Code, Chapter 23.60 and with RCW 90.58.020.

SMC 23.60.630 - Development Standards for the US Environment

The development standards for the US environment are not pertinent to this proposal since no permanent structures will be built. There will be a temporary shed used to shelter the air sparging/soil vapor extraction equipment as long as it is needed, which could be several years.

C. The Provisions of Chapter 173-27 WAC

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

CONCLUSIONS

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

The specific standards for development in the US environment are not applicable to the project as proposed since it will result in a vacant site.

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 conform to specific development standards of the underlying zone, and having established that the proposed use and development are consistent with the Seattle Shoreline Program, the proposal is approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit is **GRANTED**.

ANALYSIS - SEPA

Disclosure of the potential impacts from this project was made in the following documents: the Environmental Checklist dated August 27, 2007 and the Phase 2 Geotechnical Baseline Memorandum. The information in the SEPA checklist, the supplemental information described above, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced, may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, "*Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation*" subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-term Impacts

The following temporary or construction-related impacts are expected: temporary increase in noise levels, increased levels of fugitive dust and fumes from the construction equipment, possible vibration impacts from sheet pile installation, possible VOC fumes from gasoline contaminated soils and traffic impacts from work within the Mercer and Valley Street rights-of-way. In addition the equipment used for the air sparg/soil vapor extraction system will create noise for the duration of the remediation action, which could be one to three years. Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); the Stormwater, Grading and Drainage Control Code (SMC 22.800); best management practices (BMPs) in Director's Rule 16-2000 and State Air Quality Codes administered by the Puget Sound Clean Air Agency (air quality). Compliance with these codes and/or ordinances will lessen the environmental impacts of the proposed project.

Vibration

The historic Lincoln and McKay buildings are within 85 feet of the closest sheet pile location in this phase of work. The applicant states that no significant impacts from construction vibration were encountered during the sheet pile installation along Westlake during Phase 1 of the work. Monitoring will be conducted per the "Phase 2 Final Shoring Approach, Monitoring and Contingency Memorandum."

Contaminated Soil Transport

City code (SMC 11.74) provides that material hauled in trucks not be spilled during transport. The City requires that a minimum of one foot of "freeboard" (area from level of material to the top of the truck container) be provided in loaded uncovered trucks to minimize the amount of spilled material and dust from the truck bed enroute to or from a site. No further conditioning of the grading/excavation element of the project is warranted pursuant to SEPA policies.

Existing City code (SMC 11.62) requires truck activities to use arterial streets to every extent possible. The proposal site is near a major arterial and traffic impacts resulting from the truck traffic associated with grading will be of limited duration and mitigated by enforcement of SMC 11.62. Truck access to and from the site shall be documented in a construction traffic management plan, to be submitted to DPD and SDOT prior to the beginning of construction. This plan also shall indicate how pedestrian connections around the site will be maintained during the construction period.

Cultural Resources

The proposed remediation action is located in an area of historical fill. The proposed excavation depth of 15 to 18 feet should involve only fill soils, but deeper excavation may be needed if the contamination is deeper than expected. If excavation into native soils is needed the potential exists for discovery of archeologically significant resources. Director's Rule (DR) 2-98 provides clarification of State Environmental Policy Act (SEPA) Historic Preservation Policy for potential archeologically significant sites in Seattle (SMC 25.05.675.H) and requirements for archeological assessments. The Director's Rule places requirements on construction for projects that include ground disturbance. While it is unlikely that any archeological resources that may be present would be impacted by the excavation if resources are discovered the requirements of DR 2-98 will be invoked.

Due to the temporary nature and limited scope of these impacts as well as coverage by applicable existing regulations, they are not considered significant (SMC 25.05.794). No SEPA conditioning of potential short-term impacts appears to be warranted unless cultural resources are found during excavation.

Long Term Impacts

Long-term or use related impacts are not anticipated from the proposal since it will be left a vacant site for future redevelopment. Any impacts from the future uses will be analyzed at the time the development is proposed. Sidewalks will be either constructed or restored along the Valley, Mercer and Westlake frontages. Terry Avenue does not currently have a sidewalk and none is proposed.

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 significant adverse impacts 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).

CONDITION – SEPA

During Construction

The following condition 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.

1. 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 (Nora Gierloff (206) 684-8125) and the Washington State Archaeologist at the State Office of Archaeology and Historic Preservation (OAHP). 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 as well as all regulations pertaining to discovery and excavation of archaeological resources, including but not limited to Chapters 27.34, 27.53, 27.44, 79.01 and 79.90 RCW and Chapter 25.48 WAC, as applicable, or their successors.

Signature: (signature on file)

Nora Gierloff, Land Use Planner
Department of Planning and Development

Date: January 28, 2008