



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:** 3007894  
**Applicant Name:** Jennifer Grant for HCMP  
**Address of Proposal:** 6017 Seaview Avenue NW

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Permit to remove existing 100' breakwater and replace with 140' breakwater. As mitigation for the increased overwater coverage 424\* sq. ft. of existing dock will be removed. Project includes maintenance dredging of 700\* cu. yds. of material.

\* Project has been modified from 150 sq. ft. of dock removal and 1,640 cu. yds. of dredging since notice was issued.

The following approvals are required:

**Shoreline Substantial Development Permit** - To allow construction of a new breakwater and dredging necessary for a water-dependent use pursuant to SMC 23.60.602.

**Shoreline Conditional Use Permit** – To allow off-shore facilities (breakwater) and dredging necessary for a water-dependent use (marina) SMC 23.60.244.

**SEPA** – Environmental Determination pursuant to SMC 25.05

**SEPA DETERMINATION:**

Exempt    DNS    EIS

DNS with conditions

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

## **BACKGROUND DATA**

### Site and Vicinity Description

The Golden Tides Marina is located on Shilshole Bay immediately north of the entrance to the Lake Washington Ship Canal and south of Golden Gardens Park. Approximately half of the 40,556 sq. ft. marina parcel is upland, with 15,892 sq. ft. of additional DNR lease area containing the breakwater and a portion of a dock. The upland portion of the site contains a 10,898 sq. ft. over water marine retail sales and service building with a caretaker unit and 34 parking spaces (MUP #3004695).



### Zoning

The zoning of the site is Commercial 1 with a 40 foot height limit (C1-40). The marina parcel is within the Urban Stable (US) shoreline environment while the DNR parcel is within the Conservancy Navigation (CN) shoreline environment. The US Environment limits building height to 30' per SMC 23.60.632.

### Area Development

Much of the development surrounding the site consists of smaller structures that contain restaurants, commercial uses and residences. There are some larger residential structures in the area, such as the new building across the street. Directly north of the building is a wharf used for parking and storage and the Ray's Boat House restaurant. Directly south of the site are tidelands owned by the Department of Natural Resources.

### Proposal

The marina was established on this site in 1980 with 2,000 cu. yds. of dredging, pile driving and installation of ramps and floats for boat moorage. An additional 2,000 cu. yds. of maintenance dredging was performed in 1984. The current proposal was originally submitted in 2005 and requested construction of a new breakwater to replace the deteriorated wooden one and 2,500 cu. yds. of dredging over a 23,000 sq. ft. area to a depth of -11 MLLW (+1 foot of overdredge). The dredging has subsequently been revised to 700 cu. yds. over a 17,360 sq. ft. area with a depth of -10 MLLW without overdredge. As mitigation for the increased overwater coverage of the proposed breakwater the applicant has proposed to remove a 25 foot length of dock (150 sq. ft.) on site and two offsite derelict floats with the combined area of 274 sq. ft. (5 ft. X 20 ft. and 6 ft. X 29 ft. = 274 sq. ft.).

In addition to Seattle's review the applicant has also submitted a JARPA to the Corps of Engineers and an HPA to the Washington Department of Fish and Wildlife.

Public Comment

The comment period on this application expired on September 30, 2005. To date no comments have been submitted.

**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 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 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.

Each of these elements is evaluated below in the order they are listed in the Shoreline Master Program. The site is classified as a waterfront lot (SMC 23.60.924) and the use is water-dependent (SMC 23.60.944). The shoreline designations for the area of work are Urban Stable and Conservancy Navigation (US and CN at SMC 23.60.220).

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 and CN environments are stated in SMC 23.60.220.C.7 and C1, respectively. The applicable sections of these regulations to the current proposal are:

- *in the Conservancy Navigation Environment to preserve open water for navigation and*
- *in the Urban Stable Environment provide opportunities for public access and support water-dependent uses by providing services such as marine-related retail and moorage.*

The new breakwater will be located in nearly the same location as the existing one and therefore create no new impediment to navigation. The reconstruction of the breakwater and the maintenance dredging are necessary to maintain the water dependent marina use. The removal of 424 sq. ft. of dock and the addition of a new steel support pile will reduce over water coverage.

SMC 23.60.032 Criteria for special use approvals.

*Uses which are identified as requiring special use approval in a particular environment may be approved, approved with conditions or denied by the Director. The Director may approve or conditionally approve a special use only if the applicant can demonstrate all of the following:*

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

The proposed special use is dredging in the US shoreline environment (SMC 23.60.602 C 1). Dredging in this location has been permitted in the past and is necessary for the continued use of the existing marina.

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

The dredging is a temporary use that will allow for continued use of the site as a marina. A public access easement to a viewpoint was required as a condition of the previous SSDP issued for the site (MUP #3004695).

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

The marina has been previously established at this site. The dredging is a temporary use needed to maintain the water depth needed for boat access to the docks.

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

The proposal has been revised to reduce the area of dredging as well as the dredging depth. These changes avoid the areas of eel grass growth and preserve shallow-water habitat. The applicant will prepare an eelgrass monitoring plan that will monitor eelgrass within the project area and within at least one reference area during years 1, 3, and 5 post-project implementation. A silt curtain will be used around the dredge area to minimize the spread of resuspended sediments. This will minimize the adverse effects of the dredging on benthic epifauna.

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

The negative effects of the dredging should be temporary in nature and will permit an existing water dependent use to continue.

*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 23.60.064\_C. 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:*

*1. The proposed use is not prohibited in the shoreline environment(s) and underlying zone(s) in which it would be located;*

Boat moorage is a permitted use in the C-1 zone. The proposed dredging is a special use in the US Environment (SMC 23.60.602, see discussion above) and the construction of the new breakwater and dredging are conditional uses in the CN Environment (SMC 23.60.244). The conditional use is discussed in the next section of this report.

*2. The development meets the general development standards and any applicable specific development standards set forth in Subchapter III, the development standards for the shoreline environment in which it is located, and any applicable development standards of the underlying zoning, except where a variance from a specific standard has been applied for; and*

The conformance of the project with the general development standards listed at SMC 23.60.152 is discussed below. The conformance of the project with the specific standards for dredging listed at SMC 23.60.182 is discussed below.

*3. If the development or use requires a conditional use, variance, or special use approval, the project meets the criteria for the same established in Sections 23.60.034, 23.60.036 or 23.60.032, respectively.*

The evaluation of the project against the criteria for the special use listed at 23.60.032 is discussed above.

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. These general standards of the SMP state, in part, that all shoreline development 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.*
- *not release oil, chemicals or other hazardous materials onto or into the water...*
- *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;*
- *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;*
- *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; and*
- *be located, constructed, and operated so as not to be a hazard to public health and safety.*

The Washington Department of Fish and Wildlife commented that the dredging depth should not exceed -10 MLLW in order to preserve shallow-water habitat. The applicant has revised the project by reducing the area and depth of the proposed dredging to minimize the adverse impacts including staying out of the eel grass beds. The applicant will prepare an eelgrass monitoring plan that will monitor eelgrass within the project area and within at least one reference area during years 1, 3, and 5 after construction. A silt curtain will be used to control the migration of sediments during dredging. The new steel pile needed to support the shortened dock will be installed by vibratory hammer if subsurface conditions permit. If an impact hammer is required a bubble curtain will be used to minimize impacts to fish. Removal of the existing creosote treated piles will have a positive effect on water quality.

Moorage and marine repair facilities often have debris on the substrate caused by users accidentally and intentionally dropping debris and other deleterious material into the water. This debris degrades aquatic habitat. To meet SMC 23.60.152 all debris, including, but not limited to, boards and branches; rope, wire, nuts, bolts and pipe; tires and hoses; other small to medium sized metal; and any other material not normally found on the natural substrate, shall be removed. The applicant will be required to submit a Cleanup Documentation Plan that describes the procedures that will be used to ensure that any debris remaining in the marina and DNR lease area after dredging will be removed from the substrate.

SMC 23.60.182 Dredging standards.

*A. Dredging and dredged material disposal shall be designed to include reasonable mitigating measures to protect aquatic habitats and to minimize adverse impacts such as turbidity, release of nutrients, heavy metals, sulfides, organic materials or toxic substances, dissolved oxygen depletion, disruption of food chains, loss of benthic productivity and disturbance of fish runs and important biological communities.*

The applicant has proposed to use a silt curtain to confine the dredging impacts to the immediate area and protect the eel grass beds.

*B. Dredging shall be timed so that it does not interfere with migrating aquatic life, as prescribed by state and federal requirements.*

The project will take place within the state and federal work window, October 1<sup>st</sup> through April 15<sup>th</sup>.

*C. Open-water disposal of dredged material shall be permitted only at designated disposal sites.*

Core samples were taken from two locations within the proposed dredging area and analyzed per the regional Dredged Material Management Program (DMMP). The member agencies, COE, DOE, EPA and DNR together find that the dredged material will be suitable for open-water disposal. The applicant has proposed disposal at the Elliott Bay Puget Sound Dredged Disposal Analysis (PSDDA) open-water site.

*D. Stockpiling of dredged material in or under water is prohibited.*

Dredging will be accomplished by a clam-shell from a floating barge and spoils will not be allowed to dewater on site.

*E. Dredging of material that does not meet the Environmental Protection Agency and Department of Ecology criteria for open-water disposal shall be permitted only if:*

Not applicable because testing of core samples from the dredging site have been found to be suitable for open-water disposal.

*F. Dredging for the purpose of obtaining fill or construction material, or otherwise mining submerged land is prohibited except where the applicant can show that:*

Not applicable to this proposal.

*G. Incidental dredged material resulting from the installation of a utility line or intake or outfall may remain under water if:*

Not applicable to this proposal.

SMC 23.60.630 - Development Standards for the US Environment

The site is classified as a waterfront lot (SMC 23.60.924). The shoreline designations for the site under the Seattle Shoreline Master Program are Urban Stable/Conservancy Navigation. The scope of the work in the US Environment is maintenance dredging, removal of 424 square feet from existing docks, removal of one creosote timber pile and replacement with one steel pile.

The development standards for the US environment applicable to the proposal are listed in the table below.

<b>US Environment Development Standards</b>			
<b>Development Standard</b>	<b>Permitted/Required</b>	<b>Proposed</b>	<b>Code Citation</b>
Special Use	Dredging necessary for a water-dependent use.	Maintenance dredging for a marina.	SMC 23.60.602 C 1
Lot Coverage	Fifty (50%) percent of the submerged land.	Lot coverage will decrease by 150 sq. ft.	SMC 23.60.634A.
Regulated public access.	Not required for water-related uses.	Not required for water dependent uses, but provided by a previous approval.	SMC 23.60.638B.2.a.

As designed, the proposal conforms to the general development standards and the requirements of the underlying zone and of the shoreline overlay zones.

As proposed and as conditioned below, the project complies with the above shoreline development standards. As conditioned, the short term construction related activities should have minimal effects on migratory fish routes and do not warrant further conditioning.

The City’s Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. In conjunction with this effort DPD developed a Director’s Rule, 2000-16, to apply best management practices (BMPs) to prevent erosion and sedimentation from leaving construction sites or where construction will impact receiving waters. Due to the extent of the proposed work, the potential exists for impacts to Shilshole Bay during construction. Therefore, approval of the substantial development permit will be conditioned to require application of construction best management practices (BMPs). Completion of the attachment to the Director’s Rule and adherence to the measures outlined in the attachment shall constitute compliance with BMP measures.

The proposed construction as designed and conditioned is consistent with these general standards for development within the shoreline area, thereby minimizing any adverse impact to the shoreline area, to water and habitat quality and will not be a hazard to the public health and safety. In addition removal of the existing creosote treated piles will have a positive effect on

water quality. 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.

As noted above, Seattle's Municipal Code provides criteria for the review and conditioning of shoreline substantial development permits. Thus, as shown in the applicant's development plans and illustrated in the US Environment Development Standards matrix, the Director has determined that the proposal is consistent with the criteria of SMC 23.60.030A.2 and may be conditionally granted as noted at the end of this decision.

### **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 will be met by the proposed development.

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 with the conditions listed below.

### **DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT**

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

### **ANALYSIS – SHORELINE CONDITIONAL USE PERMIT**

The portion of the proposed project that requires a shoreline conditional use permit is the removal of an existing breakwater built with treated timber piles, construction of a new, larger breakwater with steel piles and dredging all within the CN Environment, SMC 23.60.244 C and E 2. The existing use of the site is a commercial moorage facility for boat sales with accessory marine retail sales and services.

Pursuant to SMC 23.60.244, the Director, may authorize the above uses in the CN Environment with the concurrence of the Department of Ecology if the criteria for conditional uses in WAC 173-27-160 are satisfied. The overall purpose of a conditional use permit is to provide for flexibility in the application of use regulations consistent with the policies of the Shoreline Management Act (RCW 90.58.020).

SMC 23.60.034 Criteria for Shoreline Conditional Use Approvals.

*Uses or developments which are identified in this chapter as requiring shoreline conditional use approval, and other uses which, although not expressly mentioned in lists of permitted uses, are permitted in the underlying zones and are not prohibited in the Shoreline District, may be approved, approved with conditions or denied by the Director in specific cases based on the criteria in WAC 173-27-160, as now constituted or hereafter amended, and any additional criteria given in this chapter. Upon transmittal of the Director's approval to the Department of Ecology (DOE), the permit may be approved, approved with conditions or denied by DOE.*

WAC 173-27-160 Review Criteria for Conditional Use Permits

*The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW [90.58.020](#). In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.*

*(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:*

*(a) That the proposed use is consistent with the policies of RCW [90.58.020](#) and the master program;*

The proposed construction activities are consistent with the policies of RCW 90.58.020 and the Seattle Shoreline Master Program as discussed in the previous section of this report. Those policies favor allowing alterations of the natural or man-made environment in limited instances when commercial developments are dependent on their location and provide an opportunity for people to enjoy the shoreline. The replacement of the breakwater and the maintenance dredging are needed to retain the commercial viability of the existing marina.

*(b) That the proposed use will not interfere with the normal public use of public shorelines;*

The proposal would maintain the normal public use of the shorelines by maintaining the marina facilities and public viewpoint. The new breakwater will be located in approximately the same location as the existing one.

*(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;*

The breakwater and dredging will enhance the continued use of the site as a moorage facility for boat sales and complement the adjacent activities. The previously approved marine sales and service building reconstruction onsite is related to and dependent on the currently proposed actions.

*(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and*

The impacts of the proposed construction fall into three main categories: construction impacts from the dredging, pile removal and pile driving; temporary habitat impacts due to the disruption of the dredging; and permanent shading impacts from the new breakwater.

Construction impacts will be minimized through use of a silt curtain during dredging and installation of the new steel piles using a vibratory hammer. If subsurface conditions require the use of an impact hammer a bubble curtain will be used to minimize impacts to fish. Dredging will be performed by a clamshell dredge deployed from a floating barge. Dredging spoils will be disposed of at the Elliott Bay Puget Sound Dredged Disposal Analysis open-water disposal site.

The removal of the benthic substrate through dredging will temporarily reduce the populations of the benthic and epibenthic invertebrates. The area is likely to be recolonized within one to two years of the dredging activity.

The applicant has submitted an evaluation of the shading impacts of the new breakwater in comparison with the original design of the existing timber breakwater. The number of piles and the area they occupy will be reduced, the over-water coverage will be increased from 46.4 to 431.3 sq. ft., the length will be increased from 100 to 140 feet, the width will be increased from 4 inches to 36 inches and the lateral area will be reduced from 1,100 to 420 square feet. Since the lateral area has the greatest shadowing effect the new breakwater will result in a smaller area of shadow on the substrate. In addition the new breakwater will float and therefore the shadowed area will vary by tide and season, reducing the effect on specific areas of the substrate. As a mitigation measure for the increased over-water coverage a 424 sq. ft. area of dock and a supporting timber pile will be removed, with one additional steel pile required to support the new dock end.

Overall the impacts of the proposal have been minimized through redesign and will not cause significant adverse effects to the shoreline environment.

*(e) That the public interest suffers no substantial detrimental effect.*

The proposal will not establish a new use or enlarge an existing use. The requested changes will maintain the viability of an existing approved water dependent use. The public interest will not suffer substantial detrimental effects from the maintenance of this use.

*(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW [90.58.020](#) and shall not produce substantial adverse effects to the shoreline environment.*

In reviewing the proposal and visiting the site to examine development in the area, it does not appear that granting the shoreline conditional use would produce a substantial adverse effect on the shoreline environment. There is no evidence that a cumulative impact from maintenance related to existing water-dependent uses exists or would be created by the proposal.

*(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.*

The proposed action is classified in Seattle Master Program; therefore, this criterion does not apply.

*(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.*

The proposed actions are specifically called out as subject to conditional use approval in the CN Environment. Refer to SMC 23.60.244.

### **CONCLUSION- SHORELINE CONDITIONAL USE**

SMC Section 23.60.064 E provides authority for conditioning of shoreline substantial development permits as necessary to carry out the spirit and purpose of and assure compliance with the Seattle Shoreline Code, Chapter 23.60, and with RCW 90.58.020 (State policy and legislative findings).

Thus, as shown in the applicant's development plans, the Director has determined that the proposal is consistent with the criteria for a shoreline conditional use permit and may be approved. Further, the goals of the Shoreline Master Program would be better served by authorizing the maintenance of an existing water-dependent use and its associated water-related use than allowing it to lapse due to siltation and deterioration of the existing breakwater.

### **DECISION - SHORELINE CONDITIONAL USE**

The Shoreline Conditional use is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

### **ANALYSIS - SEPA**

The most recent disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated April 11, 2008. The information in the checklist, public comment, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

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

### Short-term Impacts

Short term impacts of the proposed actions include water siltation and turbidity, disruption to the shallow-water habitat, shadowing of eel grass beds, an increase in air particulates, and noise. The under water impacts have been addressed in the shoreline section of this report.

### Air Quality

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 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 due to the relatively minor contribution of greenhouse gas emissions from this project.

### Construction Noise

The project includes removal of 18 creosote-treated timber piles, installation of 9 new steel piles and the removal of two deteriorated floats and part of an existing dock. The pile removal and installation is proposed to be done with a vibratory hammer, which while quieter than an impact hammer will still result in noise levels with an adverse impact on the nearby residences. Because of the close proximity of the nearby residences, the Department finds that the limitation of the Noise Ordinance are inadequate to appropriately mitigate the adverse noise impacts associated with the proposal. The SEPA Construction Impact policies, (SMC 25.05.675.B) allow the Director to limit the hours of construction to mitigate adverse noise and other construction-related impacts. Therefore, the proposal is conditioned to limit construction activity to non-holiday weekdays between 7:00 a.m. and 6:00 p.m.

### Long-term Impacts

Ongoing impacts of the proposed actions include disruption to salmon habitat and a decrease in air quality. The under water impacts have been addressed in the shoreline section of this report.

### Salmon Habitat and Predation

Long-term or use related impacts are also anticipated from the proposal and include impacts to Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, and known to inhabit Shilshole Bay including the proposed project area. This project is proposed to occur in the nearshore environment in Shilshole Bay, which is habitat of chinook salmon and other aquatic species. The project site serves as a migration corridor for juvenile chinook salmon from the Cedar River and other water bodies in Water Resource

Inventory Area 8. Additionally, predators of juvenile chinook are known to inhabit areas under pier structures and may use these areas as cover while preying on juvenile chinook. Small mouth bass, an introduced predator of juvenile chinook, may also use the base of pilings under pier structures as nesting sites. As mitigation for this impact the applicant is proposing to remove an area of over water coverage equivalent to that of the new breakwater. This long-term impact is not considered significant because after mitigation the impacts are minor in scope.

### Air Quality

The marina's operational activities will be maintained rather than expanded by the work under this proposal. The vehicular trips associated with the project and the projects' energy consumption are expected to 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 due to the relatively minor contribution of greenhouse gas emissions from this project. The Puget Sound Air Pollution Control Agency is responsible for monitoring air quality in the Seattle area, setting standards and regulating development to achieve regional air quality goals.

Adverse impacts may be mitigated only if the decisionmaker finds that the applicable federal, state and regional regulations did not anticipate or are inadequate to address the particular impacts of a project. No unusual circumstances exist which warrant additional mitigation, pursuant to the SEPA Overview Policy.

### **DECISION**

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.

- [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 43.21.030(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).

### **CONDITIONS - SEPA**

#### During Construction

- 1) All construction activities are subject to the limitations of the Noise Ordinance. Construction activities (including but not limited to pile removal, pile driving and deliveries) shall be limited to non-holiday weekdays from 7am to 6pm. Non-noisy activities, such as site security, monitoring, weather protection shall not be limited by this condition.

Construction activities outside the above-stated restrictions may be authorized by the Land Use Planner when necessitated by unforeseen construction, safety, or street-use related situations. Requests for extended construction hours or weekend days must be submitted to the Land Use Planner at least three (3) days in advance of the requested dates in order to allow DPD to evaluate the request.

### **CONDITIONS – SHORELINE**

#### *Prior to MUP Issuance*

- 2) Provide a drawing showing the two derelict floats proposed to be removed. Note their removal on all appropriate plans.

#### *Prior to Building Permit Issuance*

- 3) These conditions shall be included on the building permit and plans.
- 4) The applicant will prepare an eelgrass monitoring plan for DPD approval that will monitor eelgrass within the project area and within at least one reference area during years 1, 3, and 5 after construction.
- 5) A Spill Prevention, Control and Countermeasures (SPCC) Plan should be prepared and include the following information:
  - a) Construction planning-elements.
  - b) Identification of potential spill sources at the site.
  - c) Description of responsive actions, including notification and reporting procedures, in the event of a spill or release of hazardous material.
  - d) Description of the measures that will be taken to prevent the release or spread of hazardous materials, either found on site and encountered during construction but not identified in contract documents, or any hazardous materials that the contractor stores, uses or generates on the construction site during construction activities. These items should include but are not limited to gasoline, oils, and chemicals. Hazardous materials are defined in RCW 70.150.010 under “hazardous substance”.

#### *During Construction*

- 6) The appropriate Best Management Practices (BMPs) should be employed to prevent erosion and sediment from entering Lake Washington. Any debris that enters the water during construction shall be collected and disposed of in an appropriate upland facility.
- 7) Prevent uncured concrete (or any other paving materials) from entering the water.
- 8) If any heavy material enters the water and sinks during demolition and construction the location of where this material sank should be documented in a log kept on site and all this material should be retrieved at the end of construction.

