



City of Seattle

Gregory J. Nickels, Mayor

**Department of Planning and Development**

Diane M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

<b>Application Number:</b>	3009071
<b>Applicant Name:</b>	Steve Mason
<b>Address of Proposal:</b>	4025 13 <sup>th</sup> Ave. W.

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Permit to allow installation of a prebuilt over water structure and establish the use Marine retail sales and services (commercial moorage with accessory minor vessel repair). The proposal includes 906 sq. ft. of floating finger pier around a 4,180 sq. ft. (38 x 110) covered boat shed.

The following approvals are required:

- **Shoreline Substantial Development Permit** – (SMC Chapter 23.60).
- **SEPA - Environmental Determination** - (SMC Chapter 25.05).

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

**BACKGROUND DATA**

Site and Vicinity Development

The approximately 13 acre subject site is a waterfront parcel along the southern shore of Salmon Bay Waterway, just east of the Ballard Bridge located between Fisherman’s Terminal to the southwest and Ocean Beauty Seafood to the east. Known as Salmon Bay Terminal the site is owned and operated by Coastal Transport and the principal established use is Cargo Terminal. Operations at the site include use of a five (5) acre submerged parcel leased from Washington State Department of Natural Resources (DNR). The dry land portions of the site contain five (5) buildings, primarily warehouses associated with shipping and receiving goods from Alaska. Other structures on site include accessory office and shop space. There are seven finger piers

that extend from the shoreline onto DNR land and three wharves on site that provide for loading and unloading of cargo. Two thirds of the south property line borders on privately owned railroad property (BNSF/NP) and the eastern third of the south property line borders on public right-of-way (W. Blewett Way). Access to the site is off of 13<sup>th</sup> Ave W. via West Nickerson Street.

The site is zoned Industrial General 1 (IG1 U/45) with unlimited height for industrial uses and a 45 foot height limit for non-industrial uses. The shoreline environment overlay is Urban Industrial (UI) with a height limit of 35 feet. Surrounding properties to the east and west are also zoned IG1-U/45. South of the site the underlying zoning changes to Industrial Buffer (IB U/45). The shoreline designation to the east of the subject site is Urban Industrial (UI) and to the west the shoreline designation changes to Urban Maritime (UM).

### Proposal

The proposal is to establish a 4,180 sq. ft. (38 ft x 110 ft), 35 foot high covered floating boat shed along an existing finger pier, to be used for commercial boat storage and accessory minor vessel repair. The proposal also includes 906 sq. ft. (6 ft x 148 ft) of new floating piers around the south and east side of the boat shed. The total new over-water coverage for the boat shed and new finger piers is 5,068 sq. ft.

The boat shed provides for some natural light filtration to the water with the use of clear polycarbonate panels equal to twenty-five percent (25%) of the roof area and 22 windows in the side walls. Encased floats (18 inches wide by 16 inches deep by 48 inches long) run along the length of each side of the proposed boat shed. The area of the float associated with the boat shed is not included in the overwater coverage because the floats are inside the boat sheds and do not create additional over-water coverage. An additional 800 sq. ft. of floor area is proposed, including one interior "loft" (38 foot x 20 foot) and one exterior (4 foot x 10 foot) deck. These areas are also not counted as coverage because the loft is inside of the shed and the deck projects over a portion of a new finger pier.

The proposal includes mitigation for the increase of 5,068 sq. ft. in overwater coverage. This mitigation proposal provides both on-site planting at the shoreline and payment of a fee in lieu of mitigation. On-site plantings include native trees and shrubs in a 180 sq. ft. (3 foot x 60 foot) area adjacent to the location of the boat shed. The payment of a fee in lieu of mitigation of \$28,624.96 to the City of Seattle will provide for habitat restoration off-site.

### Public Comment

No public comments were received during the public comment period, which ended on October 24, 2008.

## **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 wildlife, 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 are to 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 act primarily 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 local 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.

### **B. THE REGULATIONS OF SMC CHAPTER 23.60**

SMC Section 23.60.064 requires that the proposed use must: 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) be permitted in the shoreline environment and the underlying zoning district and 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be 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 proposed development action will occur over water and is located within an Urban Industrial (UI) shoreline environment. The purpose of the UI Environment is to provide for water-dependent and water-related industrial uses by preserving areas for the "efficient use of industrial shorelines by major cargo facilities and other industrial uses".

Uses Allowed and Prohibited in the Zone

SMC 23.60.090.A states that any principal use must be permitted in the Shoreline overlay and the underlying zone SMC 23.60.090.B states that principal uses on all waterfront lots must be water dependant, water related or if not water dependant they shall provide public access. SMC 23.60.092.A states that any principal use permitted in a specific shoreline environment shall also be permitted as an accessory use.

The applicant proposes establishing Commercial Moorage with accessory Minor Vessel Repair. The underlying zoning designation Industrial General (IG1U/45) and the Urban Industrial (UI) Shoreline Environment both allow Marine Retail Sales and Service use (see SMC 23.50.012 and SMC 23.60.842 respectively). The use Marine Retail Sales and Service, as defined in SMC 23.60.926)<sup>1</sup>, includes both commercial moorage and minor vessel repair.

Boatshed use as accessory to commercial moorage and minor vessel repair

"Moorage, covered" is defined in SMC 23.60.926 as a pier or system of floating or fixed accessways covered with a roof, to which boats on the water may be secured.

The boat shed provides winter covered moorage for the boat shed owner's vessel however the remainder of the time, corresponding generally to the summer months, other boats will occupy the boat shed and undergo minor repairs. The repair and maintenance activity to be expected, as described by the applicant, includes: "sanding, painting, varnishing, repair of electrical components and so forth". The applicant reports that one to four vessels are expected to be stored in the boatshed at any given time. The use of the slip and the shed is unrelated to Coastal Transport's use of the site as a Cargo Terminal.

Based on information provided by the applicant, the principal use is commercial moorage with minor vessel repair services accessory to the covered moorage. Commercial moorage as defined in SMC 23.60.906)<sup>2</sup> is a permitted use in the UI shoreline environment.

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<sup>1</sup> In addition SMC 23.84.032 states "Retail sales and service" means a commercial use in which goods are rented or sold at retail to the general public.

<sup>2</sup> "Commercial moorage" means a marine retail sales and service use in which a system of piers, buoys, or floats is used to provide moorage, primarily for commercial vessels, except barges, for sale or rent, usually on a monthly or yearly basis. Minor vessel repair, haulout, dry boat storage, tugboat dispatch offices, and other services are also often accessory to or associated with the use.

### Development Standards

Marine retail sales and services must meet the development standards for the UI Environment (SMC 23.60.870), as well as the general development standards for all shoreline environments (SMC 23.60.150). Additionally, the proposed project must also meet the development standards of the underlying General Industrial (IG1 U/45) zone (SMC 23.50.022). The Director may attach to the permit or authorize any conditions necessary to carry out the spirit and purpose of, and ensure the compliance with, the Seattle Shoreline Master Program (SMC 23.60.064).

The proposed action is subject to the following general and specific shoreline development standards:

#### General Development Standards for all Shoreline Environments (SMC 23.60.152)

The general standards found in SMC 23.60.152 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 for the specific use or activity. Among other requirements, all shoreline development and uses must: 1) minimize and control any increase in surface water runoff so that the properties and quality of the receiving water body and shoreline are not adversely affected; 2) be located, designed, constructed, and managed in a manner that minimizes adverse impact to surrounding land and water uses and is compatible with the affected area; and 3) be located, constructed, and operated so as not to be a hazard to public health and safety.

The applicant proposes mitigation in order to meet the general development standards required of projects in the shoreline environment and the Director will require additional conditions to assure that any adverse impacts are minimized. Runoff will be reviewed under the building permit and is regulated by the City of Seattle (COS) Stormwater, Grading and Drainage Control Code (SMC 22.800). According to the BE (pg. 15, AMEC Earth and Environmental, dated June 2008) runoff from the boat shed is not expected to adversely affect water quality. The near shore location in this portion of Salmon Bay is considered foraging habitat and a migratory path for juvenile and adult Chinook Salmon (pg. 23, AMEC Earth and Environmental, dated June 2008) and the applicant has proposed shoreline restoration on and off the site as mitigation for impacts of the overwater coverage. In addition, the boathouse will be designed to allow natural light through the structure to the water.

To address the impact of the overwater coverage, a mitigation plan was developed by AMEC which includes the restoration of shoreline conditions within a 180 sq. ft. area of Salmon Bay (as noted above), that is acceptable to City of Seattle DPD. However the scope of the on-site restoration does not mitigate for the scale of the long-term impacts to aquatic habitat caused by the ongoing effect of the increased overwater coverage. Additional off site mitigation, showing removal of overwater coverage and/or appropriate restoration of shoreline conditions in the Ship Canal or Lake Union, that is acceptable to City of Seattle DPD and is of a scale to mitigate for the long-term impacts to aquatic habitat of the proposed project is an available option. Alternatively, payment can be made in lieu of additional off-site mitigation. The payment would be used by the City to fund a capital project to improve the shoreline at a location adjacent to the Ship Canal or Lake Union. The capital project would contribute to the enhancement of the aquatic environment within the same drainage basin and as close to the impacted area as possible. The payment in lieu would mitigate the impacts of the project and benefit the fish population and aquatic environment equivalent to development of a mitigation plan for such by the developer.

The boathouse and new piers will be constructed off site. Construction related impacts will be limited to a short term increase in water turbidity during delivery and installation. In addition, a Best Management Practices (BMP) Plan will be required to assure that the proposed minor vessel repair and maintenance is conducted in such a way as to minimize the chances that hazardous materials enter the water. The plan will also include response measures if such an event should occur. The new use (commercial moorage) is not expected to interfere with the existing water dependant industrial use (cargo terminal) at the site.

The floating boat repair structure, as conditioned and mitigated, is consistent with the general standards for development within the shoreline area. General development standards (SMC 23.60.152) state that Best Management Practices 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 (SMC 22.800) places considerable emphasis on improving water quality. A condition is imposed on this permit pursuant to Shoreline and SEPA authority, to ensure that Best Management Practices are followed. To ensure conformance with the General Development Standards and the Shoreline Master Program, the proponent will be required to notify contractors and subcontractors of the conditions of this permit.

#### Development Standards for UI Shoreline Environments (SMC 23.60.870)

The development standards set forth in the Urban Industrial Shoreline Environment are as follows:

##### *SMC 23.60.872 Height in the UI Environment*

The development standard limits the height of structures to a maximum height of 35 feet unless the structures are accessory to a water-dependent or water-related use and the intended use of the structure requires additional height. A height up to fifty-five (55) feet may be authorized by the Director when views of a substantial number of upland residence views are not blocked. The proposed 35 foot high accessory boat shed meets the UM height requirements.

##### *SMC 23.60.874 Lot coverage in the UI Environment*

Structures may occupy up to 100 percent of both dry and submerged land on waterfront lots. Existing lot coverage for both dry and submerged land at the site is approximately 200,000 sq. ft for buildings and piers (this coverage does not include other floats, overwater sheds or vessels moored at the piers). The total new over-water coverage for the boat shed and new finger piers is 5,068 sq. ft. The project meets the lot coverage requirements.

##### *SMC 23.60.876 View corridors in the UI Environment*

A view corridor that is thirty-five percent of the width of the lot is required if the waterfront lot has non-water dependant uses or if there is a mix of water dependant and water related uses and the water related uses occupy less than 50 percent of the dry land portion of the lot. In this case the principal use at the site, Cargo Terminal, is a water dependant use and occupies the remainder of the 13 acre site. No view corridor is required.

SMC 23.60.882 Regulated public access in the UI Environment

The principal use of the site is considered water-dependent and therefore public access is not required.

**C. THE PROVISIONS OF CHAPTER 173-27 WAC**

Chapter 173-27 of the WAC sets forth permit requirements for development in shoreline environments and gives the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and RCW 90.58 incorporate the policies of the WAC by reference. These policies have been addressed in the foregoing analysis, fulfilling the intent of WAC 173-27.

Summary

The proposed covered moorage and minor vessel repair as mitigated and conditioned meets the development standards for Marine Retail Sales and Service uses in the Urban Industrial shoreline environment per Subchapter XV of SMC Chapter 23.60 (also known as the Seattle Shoreline Master Program (SSMP)) and the provisions set forth by RCW 90.58 and WAC 173-27. Specifically, conditions for the proposed covered moorage and vessel repair including clear roof panels, grated decking and windows will allow light to the water for aquatic plant growth that will contribute to the maintenance of Chinook salmon foraging and migration patterns. In addition the structure will be built off site to reduce construction impacts.

Mitigation of the overwater coverage with shoreline planting of native plants will also contribute to a more complex nearshore and underwater environment. Additional off-site mitigation equal to the extent of the impact of the proposed coverage will be required. The applicant can choose to provide a mitigation plan showing removal of overwater coverage and/or appropriate restoration of shoreline conditions in the Ship Canal or Lake Union that is acceptable to the City of Seattle, DPD and of appropriate scale to mitigate the long term impacts to aquatic habitat caused by this project, or make a payment in lieu of mitigation to fund a capital project to improve shoreline conditions in the Ship Canal or Lake Union.

**DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

The Shoreline Substantial Development Permit is **Conditionally Approved**.

**ANALYSIS - SEPA**

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated August 28, 2008 and the Biological Evaluation (BE) prepared by AMEC Earth and Environmental, Incorporated (dated June 23, 2008 and revised September 8, 2008). The information in the checklist, the BE, 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 225.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

### Short-Term Impacts

#### Construction Impacts

The SEPA Overview Policy (SMC 25.05.665) and the SEPA Construction Impacts Policy (SMC 25.05.675B) allow the reviewing agency to mitigate impacts associated with construction activities.

The boat shed and new piers will be constructed off site, towed from Tacoma through shipping lanes and delivered to the site for installation. Installation will consist of attaching the boathouse to the existing pier using 'pile hoops'. Impacts due to the delivery and installation activities are expected to include: 1) a temporary increase in noise (not expected to exceed background noise levels of 130dB<sub>PEAK</sub>, (per BE, AMEC, June 2008); 2) a temporary increase in water turbidity levels creating a sediment plume (expected to effect an area up to 300 feet downstream of the slip (per BE, AMEC, June 2008); and 3) a temporary increase in levels of fugitive fumes from the delivery vessel.

Several Agencies have adopted ordinances to provide mitigation for some of the identified impacts, such as: The City's Noise Ordinance, the Regional Puget Sound Clean Air Agency and Federal and State regulations (and permitting authority) for water quality protection (i.e. Section 10 Permit, 404 Permit from the Army Corps and HPA permit from Washington Department of Fish and Wildlife). Compliance with adopted City, Regional, State and Federal regulations will effectively control short-term environmental impacts of the proposed installation.

Due to the temporary nature and limited scope of the installation, they are not considered significant (as defined in SMC 25.05.794) no SEPA conditioning of potential short-term impacts is warranted.

### Long-Term Impacts

The Biological Evaluation (BE) prepared by AMEC Earth and Environmental, Incorporated (dated June 23, 2008 and revised September 8, 2008) found that there are long-term use related impacts of overwater coverage that can be anticipated from the proposal such as; increased overwater coverage which reduces light to the water and diminishes the growth of phytoplankton, possible harboring of predators under large overwater structures and changes in water temperature which can contribute to changes in foraging and migration patterns for threatened species.

Related use impacts include increased potential for pollutants to enter the water due to the proposed use of materials and practices associated with the minor vessel repair and maintenance work. These long-term impacts may be considered minor, if appropriately mitigated, resulting in a determination of non-significance. Therefore the long-term impacts merit more detailed discussion in relation to the need for conditions.

### Plants and Animals

The proposed structures will be located entirely over water and represent a total of 5,068 sq. ft. of new overwater coverage in Salmon Bay. Chinook Salmon, a species listed as threatened in March 1999 under the Endangered Species Act (ESA), are known to migrate through the Hiram M. Chittenden locks (to the west of the subject site) and through Salmon Bay to and from Lake Washington, the Cedar River and other water bodies in Water Resource Inventory Area 8 (WRIA 8) which includes travel through the near shore waters of the subject site that serve as migration corridor and foraging habitat. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

As noted above, overwater coverage reduces the quality of natural habitat of adult and juvenile salmon. Reduced light penetration reduces the complexity of the aquatic environment that would naturally occur in nearshore environments. These changes can affect the behavior of threatened species causing a disruption to foraging and migration patterns (BE, AMEC Earth and Environmental, Incorporated, June 2008). The location of the overwater coverage in the nearshore environment is also of concern because juvenile salmon fry have a strong affinity for shoreline habitat and avoid swimming under large artificial structures, thus the coverage can lead to decreased habitat.

The design of the proposed covered moorage includes translucent roof panels (equal to 25 percent of the roof area) and 22 windows proposed in the side walls of the boat shed which will allow natural light to reach the water and reduce the impact of the coverage. Overwater vegetation planted at the shoreline can provide for increased insect population and contribute to food sources for migrating and foraging salmon. There is limited vegetation at the shoreline near the location of the proposed covered moorage and the existing vegetation are invasive non-native plants. Mitigation, to enhance the near shore habitat will occur through removal of non-native vegetation (such as blackberry, ivy, butterfly bush and thistle) on 180 sq. ft. of near shore habitat adjacent to the proposed location of the new boatshed and abutting the water. The area will be replanted with native vegetation such as dogwood and willow and monitored for three years to ensure the vegetation is established.

To address the impact of the overwater coverage, a mitigation plan was developed by AMEC which includes the restoration of the shoreline environment within a 180 sq. ft. area of Salmon Bay (as noted above). Additional off site mitigation, showing removal of overwater coverage and/or appropriate restoration of shoreline conditions in the Ship Canal or Lake Union, that is acceptable to City of Seattle DPD and is of a scale to mitigate for the long-term impacts to aquatic habitat of the proposed project, is an available option. Alternatively, payment can be made by the applicant, in lieu of additional off-site mitigation, to improve the shoreline at a location adjacent to the Ship Canal or Lake Union that will benefit the fish population and aquatic environment that is equivalent in value to a mitigation plan for such improvements.

Environmental Health/Water Quality

SEPA Policy 25.05.675-F provides the authority to mitigate impacts resulting from toxic or hazardous materials and transmissions. The location of the subject project is over the water and this area is proposed to be used for boat repair work. Maintenance practices such as sanding or refinishing can result in fugitive material entering the air and water. Materials associated with use at the site include but are not limited to: detergents, paints, solvents, resins, acids and acetone products. The potential exists for some of this hazardous material to enter the water and adversely impact water quality, plants and animals and the general welfare of the aquatic environment. In light of this, the proposal will be conditioned to require that all people that repair boats or use any toxic material in association with this project shall read, sign and follow the Best Management Practices plan developed for this site. This plan shall include a description of preventative measures that shall be used to prevent toxic substances from entering Salmon Bay, measures that will be taken, in the event of a toxic spill and the requirement that an emergency spill kit be kept at the site. Additionally, trained personnel will be required to be on-site to implement the toxic spill clean-up plan.

**DECISION SEPA**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance with conditions. 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).

**SEPA and SHORELINE CONDITIONS OF APPROVAL**

Prior to Issuance of Master Use Permit

1. The Best Management Practices Plan shall be part of the plan set and shall include a description of required measures that will ensure that hazardous or toxic materials are controlled during operation of any repair and maintenance work. This plan shall include measures that will be taken in the event of a toxic spill, and the requirement that an emergency spill kit be kept at the site and provisions for personnel working at this site to be trained to ensure the proper implementation of this plan.

