



City of Seattle

Greg Nickels, Mayor

Department of Planning and Development

Diane Sugimura, Director

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

Application Number: 3009086
Applicant Name: Stan Hanson for John Hunter
Address of Proposal: 344 McGilvra Boulevard East

SUMMARY OF PROPOSED ACTION

Land Use Application to construct a 9,885 square foot single family residence with attached garage in an environmentally critical area and Shoreline Substantial Development Permit to construct a single family residence in an Urban Residential (UR) Shoreline Environment. Project includes grading 2,535 cubic yards of material (2,175 cubic yards of cut and 360 cubic yards of fill) and removing eight trees. The existing single-family structure has been previously demolished. A new single-family residence is partly constructed. Construction has been halted pending completion of this environmental review.

The following approval is required:

Shoreline Substantial Development Permit to allow construction of a single family residence in an Urban Residential (UR) shoreline environment - Seattle Municipal Code (SMC) 23.60.020.

SEPA Environmental Determination - Chapter 25.05 Seattle Municipal Code.

SEPA DETERMINATION: Exempt DNS MDNS EIS

DNS with conditions

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

BACKGROUND DATA

Site and Area Description

The 11,416-square-foot site is wedge-shaped and is zoned SF 7200 (Single-Family Residential, with a minimum lot size of 7,200 square feet). The site was previously developed with a single-family residence constructed in 1927 and a separate single-car garage excavated into the hillside within the eastern portion of the site, with access from 39th Avenue Northeast. The site is also vegetated with shrubs, trees, bushes, grass, and typical residential landscaping. Some landscaping has been removed due to construction of the foundation portion of a new residence. The site slopes downward to the east, towards Lake Washington. The easterly portion of the site, approximately 18%, or 2,014 square feet, is within the UR (Urban Residential) Shoreline Overlay under Seattle Municipal Code Chapter 23.60, the Seattle Shoreline Master Program, but is separated from the water by the 39th Avenue East street right of way, to the east of the site. The entire site is also mapped as steep slope and landslide prone environmentally critical areas.

Proposal Description

The applicant proposes to demolish the existing single-family structures at 344 McGilvra Boulevard East, including an existing driveway and on-grade stairs (already demolished under issued building permit) and construct a new 9,885-square-foot home, together with installation of a 30-foot-deep shored excavation for a proposed garage, installation of a sub-surface drainage system, installation of two new driveways and retaining walls of 3,821 square feet, removal of eight existing trees, and implementation of a revegetation plan with native vegetation.

Public Comments

Public notice of the project was initially given for environmental (SEPA) review only on May 8, 2008. Twelve comment letters from ten different neighboring property owners were received during the official comment period following the May 8 notice, which ended on June 4, 2008. Two parties each submitted two different comment letters, and the others submitted one letter each. Several of the letters alleged that construction activity already permitted at the subject site caused damage to neighboring homes. Most of the letters further expressed concerns about drainage and runoff from the site, removal of existing trees and vegetation, and landslide potential. Some letters also expressed concern about the overall size of the proposed house in comparison to neighboring houses. Following publication of the SEPA decision for the project on July 10, 2008, it was determined that a shoreline substantial development review should have been added to the project, as a portion of the site and the proposed development is within the 200-foot Shoreline Overlay District. The previous SEPA decision was withdrawn and new public notice given on August 28, 2008, for both SEPA review and shoreline substantial development review. One public comment letter was received during the official comment period following the August 28 notice. The letter expressed concern about adequacy of analysis and assessment of geologic hazards and inconsistency with Shoreline Master Program regulations.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Section 23.60.030 of the Seattle Municipal Code (SMC) 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.

Under SMC Section 23.60.014 C, standards applicable to environmentally critical areas as provided in Seattle Municipal Code Chapter 25.09, Regulations for Environmentally Critical Areas, shall apply in the Shoreline District. If there are any conflicts between the Seattle Shoreline Master Program and Seattle Municipal Code Chapter 25.09, the most restrictive requirements shall apply.

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 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 and other jurisdictions with shorelines adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60 that also incorporates the provisions of Chapter 173.27 WAC. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions.

The single family residence, located on an upland lot separated from the water by a public street right of way, will further the public interests of protecting the shorelines, and will not interfere with the public's use of the water. The subject application is consistent with the procedures outlined in RCW 90.58.

B. The regulations of this Chapter; and

Chapter 23.60 of the Seattle Municipal Code is known as the "Seattle Shoreline Master Program". In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SMC 23.60.030 (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use permit) or conditioning that is necessary to protect and enhance the shorelines area (SMC 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 SMC 23.60.004 which are found in the Seattle Comprehensive Plan, and meets the criteria and development standards for the shoreline environment in which the site is located; any applicable special approval criteria; general development standards; and the development standards for specific uses.

Shoreline Environment: Development Standards

The subject property is classified as an upland lot (SMC 23.60.924) and is located within an Urban Residential (UR) environment, as designated by the Seattle Shoreline Master Program. The proposal is subject to the Shoreline Policies of SMC 23.60.004 since the subject property is located within a shoreline environment. The proposed single family residence requires a Shoreline Substantial Development Permit, pursuant to SSMP 23.60.020. The proposed single family residence is permitted in the UR shoreline environment per SMC Section 23.60.540, and must meet the standards for the UR environment as set forth in SMC Sections 23.60.570 through 23.60.578. Based on review of the submitted plans, the proposed residence meets the height standards of the UR environment under Section 23.60.572, as all construction within the UR environment is below existing grade. Lot coverage standards in Section 23.60.574 are met, as the total lot coverage is 34% (only 26% within the UR environment itself), while the Code standard is 35%. View corridors and regulated public access under Sections 23.60.576 and 23.60.578 are not required for single family residences.

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 Section 23.60.220 must be considered in making all discretionary decisions in the shoreline district. The goals of the State Shoreline Management Act and Seattle's Master Program include protecting the ecosystems of the shoreline areas, long-term over short-term benefits, and the integration and location of compatible uses within segments of the shoreline. The goals also include encouraging water dependent uses, providing for maximum public use and enjoyment and the preservation, enhancement and increase in views of and access to, the shoreline. The construction of a single family house on the subject upland lot will be consistent with the Shoreline Goals and Policies and with SMC Section 23.60.220.

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environments. 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. All shoreline development and uses must, in part: 1) minimize and control any increases in surface water runoff so that receiving water quality and shore properties are not adversely affected; 2) 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; 3) be located, constructed, and operated so as not to be a hazard to public health and safety; 4) utilize permeable surfacing where practicable to minimize surface water accumulation and runoff; 5) 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; 6) 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; 7) any 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 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, 6-93, was developed 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 location of the proposed work, the potential exists for negative impacts to Lake Washington during construction. To avoid this, the applicant should take measures to prevent contamination of land or water and use materials and construction methods which prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after construction, and prevent any construction debris from entering the water. 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).

The proposal, as conditioned below, would not adversely affect the quality and quantity of surface and ground water on and adjacent to the site on a long-term basis. No planned discharge of solid wastes would occur. Spillage of petroleum or diesel products must be avoided and contained should it occur. No intentional release of oil, chemicals, or other hazardous materials shall occur. Chemical herbicides, pesticides and fertilizers used in yard maintenance can be toxic to the aquatic environment; therefore, the project will be conditioned to provide the appropriate treatment for water runoff from the yard to prevent any chemical herbicides, pesticides and/or fertilizers from entering the water. Erosion would not result from the construction or development. Natural shoreline processes would not be adversely affected. No long-term adverse impacts to surrounding land and water uses would occur. Surfaces cleared of vegetation and not to be developed will be replanted with native vegetation pursuant to a

landscape plan provided by the applicant at plan sheet L1.0. No hazard to public safety or health is posed by this development. Navigation channels would not be affected. The proposal would not affect existing shoreline stabilization and no submerged public right-of-way or view corridors would be significantly affected. These conditions, which are based on the criteria of SSMP 23.60.152, ensure that the project conforms to the goals and regulations of the Seattle Shoreline Master Program. The public interest suffers no substantial detrimental effect from the proposal.

SMC 23.60.220 – Shoreline Environments

The purpose of the Urban Residential (UR) environment as set forth in SMC 23.60.220C6 is to protect residential areas. This residential area would be protected in terms of allowing one housing unit and increasing the housing capacity within this UR environment.

SMC 23.60.540 – Uses Permitted Outright in the UR Environment

The Urban Residential environment permits single family residences as a principal use. The proposed single family residence is a principal use and meets requirements as described in the UR environment.

SMC 23.60.570 – 23.60.578 – Development Standards for the Urban Residential Environment

The proposed single family residence would meet the development standards for single family structures in the UR environment in terms of height and lot coverage. View corridors and regulated public access are not required for single family residences.

In summary, as designed, the proposal is supported by both the purpose of the UR shoreline environment and the policies set forth in the Comprehensive Plan. The principal use would remain consistent with the underlying zoning and in character with surrounding development, and conforms to the general development standards and the requirements of the underlying SF-7200 zone.

C. The provisions of Chapter 173-27 WAC

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

Thus, as conditioned below, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

Conclusion

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).

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the annotated environmental checklist prepared on April 28, 2008 and supplemental information in the project file submitted by the applicant. The information in the checklist and the supplemental information form the basis for this analysis and decision. Pursuant to SMC Section 25.05.908 B, review is limited to issues pertinent to ECA impacts and mitigation.

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 only temporary or construction-related impacts are expected: 1) temporary soil erosion. These impacts are not considered significant because they are temporary and/or minor in scope.

City codes and/or ordinances apply to the proposal and will provide mitigation for some of the identified impacts. Specifically these are: 1) Building Code (construction measures in general) and 2) Stormwater, Drainage and Grading Code (temporary soil erosion). Compliance with these applicable codes and ordinances will be adequate to achieve sufficient mitigation. Further mitigation by imposing specific conditions is not necessary for these impacts. However, the proposal site is located in environmentally critical areas. Therefore, additional discussion of earth impacts is warranted.

Earth / Soils

The ECA Ordinance and Director's Rule (DR) 3-93 require submission of a soils report to evaluate the site conditions and provide recommendations for safe construction in areas with steep slopes, liquefaction zones, and/or a history of unstable soil conditions. Pursuant to this requirement, the applicant submitted a geotechnical engineering study prepared by Associated Earth Sciences Inc. (AES) and dated June 13, 2006. A revised AES geotechnical engineering study was also submitted and dated July 3, 2006. Fifteen supplemental studies and letters have been prepared by AES since the date of the original study. The supplemental studies and letters are dated September 11, 2006 through June 23, 2008. A separate monitoring report by Richard C. Givens, a registered land surveyor, was also prepared. The Givens report includes monitoring data from July 21, 2007 through June 7, 2008. The study and supplements, as well as the Givens report, have been reviewed by DPD's geotechnical experts. In addition, DPD has received and reviewed documentation submitted by neighbors, including geotechnical reports from Aspect Consulting, an engineering consulting firm, and reports from ABPB Consulting, a second engineering firm. After review of the documentation supplied by both the applicant and neighbors, the study and supplements submitted by AES have been approved by DPD's geotechnical experts, who possess ample authority to condition construction and related activities to meet safety and other soils-related standards in the Building and Stormwater, Grading and Drainage Control Codes, as well as the ECA Ordinance. The DPD geotechnical reviewer concluded that the project met the steep slope development standards (a waiver determination was issued on June 19, 2006) and that the general development standards of SMC Section 25.09.060 and development standards for landslide-prone critical areas of SMC Section 25.09.080 were met according to the information provided. No additional conditioning is warranted pursuant to SEPA policies.

Long-term Impacts

Potential long-term impacts that may occur as a result of this project include increased surface water runoff from greater site coverage by impervious surfaces. This long-term impact is not considered significant because the impacts are minor in scope.

The long-term impacts are typical of single-family development and will be mitigated by the City's adopted codes and/or ordinances, including but not necessarily limited to: (1) the Stormwater, Grading and Drainage Control Code (which regulates storm water runoff from additional site coverage by impervious surface); and (2) the Environmentally Critical Areas Regulations (which, among other things, requires a revegetation plan for certain activities occurring in landslide-prone critical areas, including steep slopes).

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. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(C).
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The following conditions to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

Prior to Issuance of the Master Use Permit

1. Per SMC 23.60.152 E revise the plans to indicate how the surface water will be treated so that no pesticides, herbicides, chemical fertilizers or other pollutants from the site will enter Lake Washington.

Prior to Construction

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

2. Notify in writing all contractors and sub-contractors of the general requirements of the Seattle Shoreline Master Program (SSMP 23.60.152).

CONDITIONS – SEPA

During Construction

3. In order to further mitigate the noise impacts during demolition and construction, the owner(s) and/or responsible party(s) shall limit the hours of demolition and construction to non-holiday weekdays between 7:30 a.m. and 6:00 p.m. This condition may be modified by the Department to permit work of an emergency nature or to allow low noise interior work after the shell of the structure is enclosed. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.

For the Life of the Project

For at least 5 years following final inspection and approval of installation of landscaping per plan:

4. The owner(s) and/or responsible party(s) shall install the landscaping per plan sheet L1.0 and maintain landscaping per plan.

Signature: (signature on file)
William K. Mills, Senior Land Use Planner
Department of Planning and Development

Date: November 3, 2008