



City of Seattle
Gregory J. Nickels, Mayor

Department of Planning and Development
D. M. Sugimura, Director

**INTERPRETATION OF THE DIRECTOR
PURSUANT TO TITLE 23 OF SEATTLE MUNICIPAL CODE**

In the Matter of the Use of the Property at
344 McGilvra Boulevard East

**LAND USE CODE
INTERPRETATION
No. 08-007**

DPD Project No. 3009456

Related DPD Master Use Permit
(MUP) Project 3009086

Introduction

On behalf of Heather and Christopher McQuarrie, neighbors of the property, attorneys Joseph Brogan and Patrick Schneider have requested this interpretation in conjunction with the Department of Planning and Development (DPD) review of Project 3009086, an application for a Master Use Permit (MUP), including review under the State Environmental Policy Act (SEPA) to construct a 9,885-square-foot single family residence with attached garage in an environmentally critical area, and including an application for a Shoreline Substantial Development Permit to construct a single family residence in an Urban Residential (UR) Shoreline Environment, at 344 McGilvra Boulevard East in the Madison Park neighborhood. Four questions are raised: [1] Whether a shoreline substantial development permit is required as a component of the MUP decision; [2] Whether the project complies with the general development standards for environmentally critical areas in Seattle Municipal Code (SMC) Section 25.09.060 B, restricting developmental coverage and construction activity to the most environmentally suitable, naturally stable, and least sensitive portion of the site; [3] Whether the project complies with the development standards for landslide-prone critical areas in SMC Section 25.09.080 B 1, requiring “complete stabilization” of all portions of a site that are disturbed or affected by the proposed development; and [4] Whether the project complies with the development standards for landslide-prone critical areas in SMC Section 25.09.080 B 2, requiring the proposed development to be limited and controlled to avoid adverse impacts and potential harm, and to provide safe, stable, and compatible development appropriate to site conditions.

Background

The subject property has an area of approximately 11,416 square feet and is zoned SF 7200 (Single-Family Residential, with a minimum lot size of 7200 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. Permission was granted to construct a new residence on the property under Seattle Building Permit No. 6100839, issued June 11, 2007. According to DPD records maintained in its Hansen computerized project tracking system, the application for Permit No. 6100839 was reviewed and approved by DPD staff, including Geotechnical Engineer William Bou, who approved for compliance with the standards of the Environmentally Critical Areas regulations for landslide-prone areas on May 30, 2007.

A new foundation, driveways, and some miscellaneous work was performed under the building permit before work was stopped pending the outcome of further review that was determined to be required. Some existing landscaping was also removed due to construction of the foundation portion of the 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.

The applicant's proposal was 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. In response to neighbors' contention that SEPA review should have been performed prior to issuance of Permit No. 6100839, the property owner agreed to stop construction work and apply for the SEPA review. Public notice of the SEPA review was initially given by DPD on May 8, 2008.

Following publication of the SEPA decision for the project on July 10, 2008, appeals were filed by two neighbors, contending in part 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. This interpretation was requested together with the appeal of the SEPA decision, in accordance with the Seattle Land Use Code and Seattle Environmentally Critical Areas Regulations process for request of formal Code interpretation as part of the land use decision appeal process (see SMC Section 23.88.020). The property owner, however, agreed to a withdrawal of the SEPA decision and to apply for a shoreline substantial development permit for the work already done and to be completed under Permit 6100839. Accordingly, DPD published a notice of withdrawal of its SEPA decision on August 28, 2008, and new public notice was also given on August 28, 2008, for both SEPA review and shoreline substantial development review. The City's Office of Hearing Examiner then issued an order dismissing the SEPA appeals previously filed. This interpretation remains an active request by the appellant neighbors and has been published simultaneously with the publication of the revised SEPA and shoreline substantial development review (DPD Project No. 3009086).

Analysis

Each issue raised by the request for interpretation, as summarized in the introduction, is discussed below as follows:

- 1. A shoreline substantial development permit application has been submitted by the property owner and analyzed by DPD, and therefore the question of whether a shoreline permit review or an exemption from shoreline review is legally required for this application is moot.**

As described in the background discussion above, the property owner agreed to a withdrawal of the previously published SEPA decision in Project No. 3009086, and to a renote of the project with both a SEPA review and a shoreline substantial development permit review included in the project. Since the project now includes shoreline review, it is unnecessary to decide whether the shoreline review was required under Seattle Municipal Code (SMC) Chapter 23.60, the Seattle Shoreline Master Program, as contended in the request for interpretation.

- 2. The project was evaluated during the review of Permit No. 6100839 and determined by the DPD geotechnical engineer to be in compliance with the requirements of SMC Section 25.09.060 B.**

SMC Section 25.09.060 B is one of the general development standards that must be met by projects in environmentally critical areas. The section provides as follows:

“B. The project shall avoid adverse impacts from development on environmentally critical areas and buffers, and the Director shall restrict developmental coverage and construction activity areas to the most environmentally suitable, naturally stable, and least sensitive portion of the site in order to protect the ecological functions and values of wetlands and fish and wildlife habitat areas, prevent erosion from development on steep slope areas, and protect the public health, safety and welfare in landslide-prone, liquefaction-prone, and flood-prone areas. Grading activities and impervious surfaces that may impact environmentally critical areas or buffers shall be kept to a minimum and limited to areas approved by the Director.”

Section 25.09.060 lists the specific critical areas in which compliance with its standards is required. Of the listed critical areas, the only one applicable to the 344 McGilvra Boulevard East site is the landslide-prone designation. A waiver of steep slope standards was approved on June 19, 2006, by DPD Geotechnical Engineer William Bou (now Civil Engineering Supervisor with Seattle Department of Transportation Shoring Review and Inspection) based on submittal of an “ECA exemption application” dated June 16, 2006, which included road profiles from City Engineering records indicating that the steep slopes along the east and west property lines were created by previous grading from construction for street improvement purposes. The waiver decision removed any specific development coverage restrictions from the steep slope portions of the property.

Mr. Bou then determined as part of his review of Project 6100839 that there were no adverse impacts to the landslide-prone critical area on the site and that the proposed development met the general standards in Section 25.09.060 B. According to Mr. Bou, during the course of the ECA review, the proposed construction plans (plans for Project 6100839 are replicated for the related MUP Project 3009086) and the submitted geotechnical reports by Associated Earth Sciences, Inc. (AESI), the property owner’s geotechnical engineering firm, were evaluated with respect to the site geometry and conditions. The geotechnical aspects of the project were reviewed for adherence to the standard of practice in geotechnical engineering in the industry. Specifically,

proposed temporary excavations, temporary shoring, and new foundations were evaluated for potential adverse impacts to the adjacent properties and street rights-of-way. Correction notices from DPD were issued to the applicant during the permit review process. Subsequently, after responses were provided to the correction notices, Mr. Bou, based on his experience as a geotechnical engineer, concurred with AESI's recommendations and design concepts for a proposed "deep foundation" design, soil anchor system, temporary shoring support, and associated temporary excavations. As designed by AESI, as reflected on the approved plans and in the documentation provided to DPD, the project complies with Section 25.09.060 B.

3. The project achieves complete stabilization of all portions of the subject site that are disturbed or affected by the proposed development, as well as adjacent properties and rights-of-way that are disturbed or affected.

Section 25.09.080 B 1 provides as follows:

"Complete stabilization of all portions of a site that are disturbed or affected by the proposed development, including all developmental coverage and construction activity areas, is required. Complete stabilization of all portions of a site refers to the process and actions necessary to stabilize proposed site improvements, and all on-site areas and adjacent properties, including adjacent public and private rights-of-way, that are disturbed or affected."

According to Mr. Bou, the issue of 'complete stabilization' of all on-site areas and adjacent properties, including adjacent public and private rights-of-way was determined during review of the construction permit. The review was similar to other ECA projects that DPD has reviewed and had approved within the ECA Potential Landslide Area. As in the review of compliance with Section 25.09.060 B, the proposed construction plans were evaluated to ensure minimal adverse impacts to all development area and/or adjacent properties or right-of-way. Again, subsequent to a number of correction notices, Mr. Bou concurred with AESI's design concepts for a deep foundation system to support the new building, the temporary shoring system with subsurface anchors, the recommended temporary excavations, and proposed temporary erosion sediment control as shown on the permitted plans. Thus, Permit No. 6100839 was issued with conditions that Geotechnical Special Inspection be part of the permit process during excavation and construction.

Based on the field memos from AESI during excavation and construction, there were some geotechnical issues related to pile construction that were encountered and resolved by the project Geotechnical Engineer (AESI). DPD inspectors and the geotechnical engineer (Mr. Bou) monitored the progress of this project periodically during excavation and construction, and did not observe any significant instability issues.

As to the allegations of ground movements on the McQuarries' property, DPD had provided a statement dated December 6, 2007 that these allegations appeared to be unsupported at this time (see letter of December 6, 2007 from DPD Operations Director Robert Laird to attorney Joe Brogan and AESI letter to attorney Donald Marcy of December 4, 2007, which states in part, "[i]n our opinion, the survey data does not support the conclusion that settlement is occurring at the survey monitoring points as a result of construction at 344 McGilvra Boulevard East"). DPD requested in its letter of December 6 to Mr. Brogan that additional information be provided, to be signed and stamped by a licensed engineer, in the event of disagreement with the conclusions of the DPD special inspection engineer as summarized in the December 6 letter. Mr. Bou has stated that, at the time of this interpretation, he is not aware of any new information provided by the McQuarries that would alter his opinion.

