



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

**Application Number:** 3009466  
**Applicant Name:** Gregory Ashley  
**Address of Proposal:** 9714 Rainier Avenue South

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development application to allow a 251 square foot fixed pile pier and installation of a free standing portable boat lift accessory to a single family residence (proposed under MUP # 3002287).

The following approvals are required:

**Shoreline Substantial Development Permit** – to allow a 251 square foot fixed pile pier and installation of a free standing portable boat lift in a Conservancy Recreation (CR) shoreline environment (SMC 23.60.020).

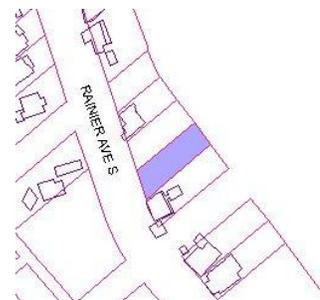
**SEPA - Environmental Determination** - Chapter 25.05 SMC

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

**BACKGROUND DATA**

Site and Area Description

The proposal site is located along the Lake Washington shoreline south of the Rainier Beach commercial district. The lot would be roughly rectangular except for its diagonal street property boundary along Rainier Avenue South. The total lot depth is 133-feet along the north property boundary and 151-feet along the south property boundary. Most of the lot is submerged beneath Lake Washington leaving an approximately 23-foot to 31-foot depth dry land lot along the north and south property boundaries respectively to the Ordinary High Water Mark (OHWM).



The shoreline of this lot and the adjacent lots to the north and south is comprised of a piled large rock wall. The lot to the south contains a single-family structure entirely on land. The lot to the north is similar in size to the subject lot and is vacant. The next lot to the north of that contains a single-family structure that extends over the Lake. The development pattern of single-family lake front structures continues to the north and south along this section of Rainier Avenue. The zoning is Single-Family 5000 (SF 5000) with similar Urban Residential (UR) and Conservancy Residential (CR) Shoreline Master Program Environmental designations to the subject site. One isolated area of Neighborhood Commercial (NC) zoning exists directly across the street from this site.

### Proposal Description

The applicant proposes to construct an “L” shaped 251 square foot fixed pile pier with an adjacent free standing boat lift, both accessory to a proposed single-family structure on the dry land portion of the site (See DPD Project # 3002287). The proposed pier would extend directly from the proposed structure, which itself would be constructed up to the Ordinary High Water Mark (OHWM). Due to the very small dry land portion of the lot, the applicants applied for an *Environmentally Critical Area Exception* to locate the single-family structure in the 25-foot Shoreline Habitat residential setback. DPD has **Conditionally Approved** this request; MUP decision publication is pending.

### Public Comment

During the 30-day public comment period that ended November 14, 2008 no comments were received.

## **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 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 adverse affects 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, in so far 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.

### **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 SMC 23.60.030. 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 that 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 a waterfront lot (SMC 23.60.924) and is located within an Urban Residential (UR) environment, for the dry land portion, and the Conservancy Recreational environment (CR) for the submerged portion, 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 pier requires a Shoreline Substantial Development Permit, pursuant to SSMP 23.60.020. The proposal pier is permitted in the CR Shoreline environment as an accessory use to a permitted structure in a UR environment (SMC 23.60.362), but must also meet the standards for the CR environment. As stated above, a single-family structure conforming to the standards for such structures in a UR environment has been **Conditionally Approved** by DPD (#3002287). As of the date of this decision, the conditional approval decision document for that structure has not been published. Approval of this pier proposal is consequently **Conditioned** on the issuance of MUP #3002287 and subsequent construction and final approval of the building permit for that single-family structure.

#### 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 goals for shoreline use include long-term over short-term benefits, the integration and location of compatible uses within segments of the shoreline, and the location of all non-water dependent uses upland to optimize shoreline use and access. The goals also include providing for

the optimum amount of public access – both physical and visual – to the shorelines of Seattle and the preservation and enhancement of views of the shoreline and water from upland areas where appropriate.

#### 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. Relevant to this proposal, SMC 23.60.152.H requires that *“all shoreline development and uses must 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. 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.”*

This project is proposed to occur in the “littoral” (shallow water) area and adjacent to the shorelines of Lake Washington. The littoral area is part of the migration corridor of Chinook salmon and serves as rearing and migratory habitat for Chinook salmon from the Cedar River and potentially other water bodies in Water Resource Inventory Area 8. Shading of the water from proposed over water structures and structures adjacent to the water reduces amount of light available to phytoplankton and aquatic macrophytes and increases the risk of predation on juvenile salmonids. Section 23.60.152 H requires avoidance of impacts first and if impacts cannot be avoided then mitigation measures to protect habitat functions. As discussed below, the City’s 2004 Best Available Science and other documentation show that development over water and within 100 feet landward of the Ordinary High Water Mark (OHWM) has adverse impacts on the shoreline habitat. Development at this location over water would have adverse impacts, if unmitigated, to the fish and wildlife habitat conservation areas (SMC 23.60.152.H and 23.60.152.I).

Clearly identified short and long-term impacts on juvenile Chinook salmon and the aquatic environment include water quality impacts from construction and water quality and over-water coverage impacts during the life-time use of the pier over the habitat of a threatened species.

The proposed work will take place in and adjacent to water and the delivery of construction material will take place over-water. Both of these activities create the potential for debris and other deleterious material to enter the water during the proposed work. The entrance of these materials into the water can pose the potential danger of water and near shore contamination and shoreline erosion. The contamination from spills could lead to both water quality and aquatic habitat damage, all with impacts on protected fish species. To mitigate for these construction impacts the proposal is **Conditioned** to follow construction Best Management Practices (BMP’s), including the following:

- Prior to commencing construction an emergency containment plan and procedures shall be developed for all toxic material that will be kept on site. All necessary equipment for containment and clean-up of this toxic material shall be stocked on the site and a sufficient number of personnel that will be on-site during construction shall be trained in the proper implementation of this plan... The plan shall also include these requirements:

- Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water.
- Equipment using oil, gasoline, or diesel used on site shall be checked daily for evidence of leakage, if evidence of leakage is found, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
- The use of a vibratory hammer for pile installation shall occur as much as possible. Best Management Practices and noise abatement measures such as cushions and bubble curtains shall be utilized in the event impact hammer use is required.
- A turbidity curtain and debris boom shall be deployed around the project area during in- and over-water work to decrease the probability of debris or other deleterious material from entering the water during the proposed work. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.
- If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.

Also, to reduce the possibility of construction impacts on protected fish species the following *Condition* applies:

- Work water-ward of ordinary high water will be restricted to work windows established by the Washington Department of Fish and Wildlife and the Army Corps of Engineers.

The City's Best Available Science report, determined that over-water coverage reduces the amount and quality of natural habitat of juvenile Chinook salmon and provides habitat for introduced predator species of juvenile Chinook. The impacts of over-water structures on juvenile Chinook habitat include shading of the near-shore lake environment causing some of the Chinook salmon to alter their migration pattern by following the outside of the overwater structure into deeper water. While in deeper water the juvenile Chinook are more susceptible to predation by larger fish because they have no refuge.

Shading may also provide cover for predator species of juvenile Chinook including smallmouth bass, an introduced species that prey on juvenile Chinook salmon. Over-water structures contribute to the simplification of the shoreline environment. The simplification of the near-shore lake environment eliminates the amount of habitat available for juvenile Chinook to find refuge from predators including smallmouth bass. Ideal refuge for juvenile Chinook is shallow water that allows the juveniles to escape from predation by larger fish. Complexity in the shallow water habitat in the form of overhanging vegetation, a sinuous shoreline, and woody debris in the very shallow areas provides refuge in the form of undercut banks and interstitial spaces for the juvenile salmon to escape the predators.

The following measures have been agreed upon by the applicant and DPD to minimize and mitigate for the project's impacts to fish and wildlife habitat conservation areas and natural shoreline processes and will be *Conditions of Approval* for this permit (SMC 23.60.152.H and 23.60.152.I):

- The proposed pier shall be constructed of a grated decking material to allow light transmission to the water for aquatic vegetation growth and reduced predation potential on migrating salmon. No artificial lighting will be included in the pier design or use.
- No treated wood shall be used in the decking material. At least 60 percent light shall reach the water under the pier at the completion of the new pier.
- No pier fascia shall be installed (it blocks natural light from reaching under the pier).
- Any treatment of the steel or aluminum material on this pier shall be non-leaching and non-toxic to the estuarine and marine environment.
- All trash and debris shall be removed from the lake bottom water-ward of ordinary high water on this parcel in order to reduce predator habitat for juvenile salmon and expose natural substrate in the near-shore environment.
- Due to the lack of on-site re-vegetation opportunities following the construction of the single family residence the applicant has agreed to contribute \$2,500.00 toward a shoreline re-vegetation project by Seattle's Department of Parks and Recreation at Seward Park on Lake Washington (or similar lake front site as determined by Seattle's Department of Parks and Recreation).

Each of these measures is believed to improve habitat conditions for Chinook salmon and other juvenile salmonids that utilize the site. Collectively these measures are believed to help reduce dark areas under the pier and increase the availability of near-shore habitat for migration and rearing, which will allow the juvenile salmon to remain in the shallow water during their migration and reduce the juvenile Chinooks' vulnerability to predation.

#### SMC 23.60.204 – Piers and Floats Accessory to Residential Development

This section sets forth standards for piers accessory to a permitted residential use. The proposed pier fully conforms to these development standards.

#### SMC 23.60.220 – Shoreline Environments

The purpose of the Conservancy Residential (CR) environment as set forth in SMC 23.60.220.C.3 is to “protect areas for environmentally related purposes, such as ...residential piers...and migratory fish routes”. Further the intent of the CR environment is to “use the natural ecological system for...recreation” but with the “maximum effort to preserve, enhance or restore the existing natural ecological, biological...conditions shall be made in designing, developing, operating and maintaining” these facilities.

To address related impacts to shoreline habitat and migratory fish as discussed above, the applicant has agreed to a series of mitigating measures described above about the general development standards contained in SMC 23.60.152 and that are *Conditions of Approval* for this permit.

#### SMC 23.60.362 – Accessory Uses Permitted Outright in the CR Environment

The Conservancy Residential environment permits recreational piers as an accessory use to a permitted residence. The proposed pier will be accessory to the single-family residence *Conditionally Approved* by DPD under MUP #3002287, but not yet been published or constructed.

To assure this approved pier will be accessory to a legal structure, the approval of this permit is **Conditioned** as outlined above in “*Shoreline Environment: Development Standards*”.

#### SMC 23.60.390 – Development Standards in the Conservancy Residential Environment

The proposal would meet the development standards for piers as outlined in SMC 23.60.390. The pertinent development standards are in 23.60.392, Natural Area Protection, and 23.60.396, Lot Coverage.

SMC 23.60.392, Natural Area Protection, requires all developments in the CR Environment to be located and designed to minimize adverse impacts to natural areas of biological significance and to minimize development in these areas. The proposed pier will be within the area / dimension limitations of 23.60.204 but is expected to have adverse impacts. However, as outlined in SMC 23.60.152 above adverse impacts will be mitigated through the **Conditions of Approval** that require an improved dock design and by the contribution to off-site shoreline habitat mitigation.

#### 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 is also consistency with WAC 173-27 and RCW 90.58.

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

#### DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

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 dated September 24, 2008 and supplemental information in the project file submitted by the applicant's agent. The information in the checklist, the supplemental information, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision. The Director of the Department of Planning and Development (DPD) has determined that the proposal is not likely to have probable significant adverse environmental impacts.

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, 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) mitigation can be considered.

### Short - Term Impacts

The following temporary or construction-related impacts are expected: water quality impacts from over-water construction and air / greenhouse gas impacts. These impacts are not considered significant because they are temporary (Section 25.05.794, SMC). Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

#### *Water Quality and Plants and Animals*

The proposed construction work will take place in the waters of Lake Washington. Additionally, construction material will be delivered by barge over-water. With the proposed work taking place in and adjacent to water and the delivery of construction material taking place over-water, there exists the potential for debris and other deleterious material to enter the water, disturbance to the shoreline and increased water turbidity during this proposed work. However, best management practices (BMPs) and an emergency containment plan, as outlined above in “*Shoreline Environment: Development Standards are Shoreline **Conditions of Approval***”, hence no further SEPA conditions for these impacts is warranted.

#### *Air Quality*

Construction activities themselves will generate minimal direct impacts. However the indirect impact of 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 (GHG) emissions that 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. No potential short term significant adverse impacts to air are anticipated and therefore air quality mitigation is not necessary.

### Long - Term Impacts

Significant long-term or use related impacts to Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are anticipated from the proposal. These are an increase of overwater coverage and substrate alteration at the site due to the proposed 251 square foot dock. Also, long-term *Air Quality* impacts are anticipated from this proposal.

#### *Water Quality and Plants and Animals*

The City of Seattle’s Environmental Policies and Procedures 25.05.675 N (2) 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.* However, no **Conditioning** under SEPA is warranted because adequate mitigation for these long-term effects through SMC 23.60.152, Development Standards are **Conditions of Approval** for the Shoreline Substantial Development Permit, as discussed above.

#### *Air Quality*

The presence of the proposed pier and boat lift is not expected to result in substantial increases in carbon dioxide and other greenhouse gas emissions that adversely impact air quality and contribute to climate change and global warming. However, if used for motorized boats greenhouse gas emissions from the operation of marine internal combustion engines can be expected to occur.

However, these are not expected to be significant and therefore pose no potential long term significant adverse impacts to air quality so no mitigation is necessary.

### **DECISION – SEPA**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public 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. A Supplemental EIS is not required under RCW 43.21C.030 2c.
- [ ] 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 2c.

### **CONDITIONS OF APPROVAL: SHORELINE**

The following conditions to be enforced during construction and for the life of the project 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. 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 any Construction Permit**

1. Notify all contractors and sub-contractors in writing that they are subject to the general requirements of the Shoreline Master Program (SMC 23.60.152), including the following:
  - The location, design, construction and management of this project 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 water quality management programs and regulatory agencies.
  - Best Management Practices shall be employed during the proposed over-water work as necessary to keep debris and deleterious material out of the water. The contractor shall include a written description of the BMPs that will be used during the proposed work on or attached to the plans.
2. An emergency containment plan and procedures shall be developed for all toxic material that will be kept on site. The plan shall also include these requirements:
  - All necessary equipment for containment and clean-up of this toxic material shall be stocked on the site and a sufficient number of personnel that will be on-site during construction shall be trained in the proper implementation of this plan...
  - A turbidity curtain and debris boom shall be deployed around the project area during in- and over-water work to decrease the probability of debris or other deleterious material from entering the water during the proposed work. If floating debris enters the water

- during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.
- Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water.
  - Equipment using oil, gasoline, or diesel used on site shall be checked daily for evidence of leakage, if evidence of leakage is found, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
3. The dock design shall include the following:
- No treated wood shall be used in the decking material.
  - At least 60 percent light shall reach the water under the pier at the completion of the new pier.
  - No artificial lighting will be allowed on the new pier.
  - No fascia shall be installed (because it blocks natural light from reaching under the pier).
  - Any treatment of the steel or aluminum material on this pier shall be non-leaching and non-toxic to the estuarine and marine environment.
4. Make the required \$2,500.00 shoreline mitigation payment to the Seattle Department of Parks and Recreation for a shoreline re-vegetation project. The project will be at Seward Park on Lake Washington (or similar lake front site as determined by Seattle's Department of Parks and Recreation).

During Construction

5. The owner(s), builder(s), or responsible party(s) shall follow the General Requirements of the Shoreline Master Program (SMC 23.60.152), the BMPs developed to prevent debris and other deleterious material from entering the water, and the procedures of the required emergency containment plan.
6. Work water-ward of ordinary high water will be restricted to work windows established by the Washington Department of Fish and Wildlife and the Army Corps of Engineers.
7. The use of a vibratory hammer for pile installation shall occur as much as possible. Best Management Practices and noise abatement measures such as cushions and bubble curtains shall be utilized in the event impact hammer use is required.
8. A turbidity curtain and debris boom shall be deployed around the project area during in- and over-water work. If floating debris enters the water during the proposed work this debris shall be removed immediately.
9. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all sunken debris.

Prior to Building Permit (Pier)Final Approval

10. Final building permit inspection and approval for the single-family structure.

For the life of the project

11. The area water-ward of ordinary high water on this parcel shall be kept free of boulders and man-made debris.

12. Continue conformity to the size and design parameters of this approval.

**CONDITIONS OF APPROVAL: SEPA**

*None.*

Signature: \_\_\_\_\_ (signature on file) Date: June 17, 2010  
Art Pederson, Land Use Planner  
Department of Planning and Development

AP:lc