City of Seattle
Gregory J. Nickels, Mayor

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

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

Application Number: 3009467

Applicant Name: Ryan ManKoski

Address of Approval: 3130 Portage Bay Pl. E. (KCA #529)

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow a 1,280 sq. ft. floating home with roof deck in an environmentally critical area (Steep Slope/Shoreline Habitat Buffer). The existing floating home is to be removed. Surface parking for one vehicle is to be provided on site (KCA #529).

The following approvals are required:

Shoreline Substantial Development Permit – for future construction of a one-story floating home in an Urban Residential (UR) Shoreline Environment – (SMC 23.60.540).

SEPA - Environmental Determination - (SMC 25.05).

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

BACKGROUND DATA

Existing Conditions

The subject site is located on Portage Bay (Lake Union) in an Urban Residential (UR) shoreline environment. The float area for the existing float to be removed is approximately 1,282 sq. ft. The zoning designation of the site is Single Family 5000 (SF 5000). The subject floating home moorage is conforming to the General Standards set forth for conforming floating home moorages.

Area Development

The proposal site is part of an existing group of two floating home moorages. The subject floating home is the second floating home from the land and is moored in the second slip of the group closest to the east property line (Slip #D) (KCA#529). The subject floating home is located on the north side of the dock, adjacent to the shoreline. It is bounded to the north and south sides by other floating homes, to the east by Lake Washington and to the west by and empty floating home slip on the same site. Over water development surrounding the subject site in Lake Union's Portage Bay consists of floating home moorages. The subject site and the surrounding area are zoned single-family with a minimum lot size of 5,000 sq. ft. (SF5000) in an urban residential shoreline environment. Other development in this area consists of water-related residential uses.

Proposal

The applicant proposes to remove the existing floating home and replace it with a new 1-story floating home on the existing cedar log float. The float area for the new floating home is approximately 1,282 square feet. The existing float measures approximately 31 ft. 8 inches x 40-ft. 5 inches. The new floating home is a total of approximately 1,482 sq. ft. with the 200 square foot roof deck. The new floating home will have a roof height of 18-Ft from the surface of the water. Surface parking for one vehicle will be provided for Unit #D on the dry land portion of the property where unit #A is located. Evidence of the current DNR lease was submitted for this project.

Public Comment

No comment letters were received during the comment period that ended September 26th, 2008. However, Metro generally recommends for floating homes, that to protect the water quality of Lake Union, materials, and construction methods should be used, which prevent toxic materials, petrochemicals, and other pollutants from entering surface water during and after construction. The least toxic wood preservatives that are appropriate for fresh water should be used. Any construction debris floating in the water shall be promptly removed.

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 wild life, 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 shall 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 primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a 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. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. THE REGULATIONS OF CHAPTER 23.60

The regulations of SMC, Section 23.60.064 require that the proposed use (s): 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 policies support and encourage the establishment of water dependent uses. Floating homes, because of their historic role in Seattle, are designated as a water dependent use, but the increase of floating home moorages or the increase in use of the shoreline or water area by floating homes, however, is not necessarily encouraged. The intent is to recognize the existing floating home community in Lake Union, while protecting natural areas, preserving public access to the shoreline, and preventing the displacement of water dependent commercial and manufacturing uses by floating homes. Areas with substantial concentrations of existing floating homes shall be given a designation that preserves residential uses. The proposal site is located in an area designated as Urban Residential, the purpose of which is to protect residential areas in a manner consistent with the Single family and Multi-family Residential Area Policies. Therefore, the proposed project would conform to the policies of the comprehensive plan and would be consistent with the purpose of the UR designation.

Development Standards

The proposal to construct a new floating home is permitted outright in SMC 23.60.540 governing the UR shoreline environment. The proposed action is therefore subject to:

1. *the general development standards for all shoreline environments (SSMP 23.60.152);*
2. *the development standards for uses in the UR environment (SSMP 23.60.540);*
3. *the development standards for nonconforming floating homes (SSMP 23.60.196); as well as*
4. *the development standards for Single Family zones (SMC 23.44).*

1. General Development Standards for all Shoreline Environments (SSMP 23.60.152)

These general standards 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. All shoreline development and uses must: 1) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected; 2) be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes; 3) 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; 4) 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; 5) be located, constructed, and operated so as not to be a hazard to public health and safety; and 6) dispose of all debris, overburden and other waste materials from construction in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.

Additionally, general development standards (SSMP 23.60.152) state that Best Management Practices shall be followed for any development in the shoreline environment. These measures are required to prevent degradation of land or water. The Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. To ensure conformance with the standards in SMC 23.60.157, the proponent will be required to notify contractors and subcontractors of these requirements.

2. Development Standards for UR Shoreline Environments (SSMP 23.60.570)

The development standards set forth in the Urban Residential Shoreline Environment relate to height, lot coverage, view corridors and public access. The subject site, however, non-conforming and therefore subject to the development standards set forth in the specific floating home standards for conforming structures as described below:

SSMP 23.60.570 and 23.60.196C - Development Standards for UR Environments and Nonconforming Floating Home Moorage

All development must conform to the development standards in the UR shoreline environment, as well as the underlying Residential zone. Standards such as height, lot coverage, public access

and view corridors have been met or are not affected by this proposal. Regulated public access is not required for a floating home (SSMP 23.60.638B).

The development must conform to the general standards for floating homes (SSMP 23.60.196). The new floating home will not block the view corridor to the water. As proposed, the new floating home meets the general standards for floating homes.

The development must also conform to the general standards for non-conforming moorage in SSMP 23.60.196.C. Section 23.60.196.C.1 allows the remodeling, replacement, or rebuilding of a floating home at a moorage existing as of March 1, 1977, when the moorage does not satisfy the lot coverage, open water, site area, setback, view corridor or location provisions for conforming floating home moorage. The proposal meets the requirements of Section 23.60.196.C.1 in that the total float area will not be increased; the height of the floating home will be 18 feet from the water, the minimum distance between adjacent floating home walls will not be decreased to less than six feet, the minimum distance between any wall and any floating home site line will not be decreased to less than three feet, no part of the floating home will be extended over water beyond the edge of the float; and the remodel will not increase the nonconformity of the floating home moorage with respect to view corridors to the water.

Seattle Comprehensive Plan - Shoreline Policies

All discretionary decisions in the shoreline district require consideration of the Shoreline Goals and Policies, which are part of the Seattle Comprehensive Plan's Land Use Element, and consideration of the purpose and location criteria for each shoreline environment designation contained in SMC 23.60.220. The policies recognize the existing floating home community in Lake Union and Portage Bay, while protecting natural areas, preserving public access to the shoreline, and areas with substantial concentrations of existing floating homes shall be given a designation that preserves residential uses. An area objective for this portion of Union Bay is to preserve the existing floating home community while at the same time to restore and enhance the Lake's natural environment. (Please refer to Area Objectives for Shorelines of Statewide Significance, Policy L354 2). The purpose of the Urban Residential (UR) environment as set forth in Section 23.60.220 C6 is to protect residential areas, such as existing floating home moorages. This floating home moorage site is considered pre-existing for the purposes of the Seattle Shoreline Master Program because it has an assigned King County Assessor's (KCA) number ***(KCA #529)*****.** The KCA established it as a pre-existing use at the established moorage in Lake Union as of the effective date of Chapter (SMC 23.60.196.A4). A moorage plan was submitted with this application and is on file with the Department of Planning and Development (SMC 23.60.196 A6).

The proposed improvements would facilitate the continued and enhanced operation of an existing floating home, a use supported by both the purpose of the UR shoreline environment and the policies set forth in the Land Use Element of the Comprehensive Plan. The proposed new floating home to increase living space would create greater optimization and efficiency within the water dependent use (floating home).

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environments. The standards 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. SSMP 23.60.152 sets forth the general development standards with which all uses must comply, including best management practices. The floating home will be consistent with these development standards for the following reasons: A condition is imposed on this permit to ensure that construction will comply with Metro's recommendations on similar proposals, which are to protect the water quality of Lake Union during construction, to prevent wastes or untreated effluents from entering the water; and that all construction should occur on the float to minimize adverse impacts and protect the fish and wildlife habitat conservation areas.

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.

Conclusion

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

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

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 environmental checklist submitted by the applicant dated August 7th, 2008. The information in the checklist and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

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

Short-term Impacts

The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in water turbidity levels, increased levels of fugitive dust and fumes from the construction equipment, disturbance of shorelines and displacement of some fish wildlife species due to increased water turbidity levels and increased noise from the construction activities. Due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC 25.05.794).

Several adopted codes and/or ordinances provide mitigation for the identified construction impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); State Air Quality Codes administered by the Puget Sound Clean Air Agency (air quality); and the Seattle Shoreline Master Program. Compliance with these codes and/or ordinances will lessen the environmental impacts of the proposed project.

No SEPA conditioning of potential short-term impacts is warranted because impacts from the short term construction impacts will be mitigated through other codes, ordinances and regulations.

Construction Impacts

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant.

Greenhouse Gas Emissions

Operational activities, primarily vehicular trips associated with the project and the project's energy consumption, are expected to result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant.

Plants and Animals

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit Lake Washington including the proposed project area. 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.*

Bulk and Scale

The proposed total height of the one-story floating home is 18 feet, which is below the twenty-one feet (21) maximum height allowed from the water surface. There is adequate separation between the floating home and any other floating home in the area, so solar access to those sites

will not be obstructed. The appearance of bulk of the floating home will be reduced by design elements incorporated into the structure and also the fact that the new floating home is smaller in scale than the existing floating home to be removed. There are a number of existing homes in the vicinity of a similar size and scale as the proposal. For these reasons, the proposed floating home at KCA #529 will not be out of scale with other floating homes in the vicinity, and no adverse impacts are expected related to bulk and scale.

Underwater Habitat

No disturbance of the lake bed sediments is expected since all work will be done above water and there will be no increase in over-water coverage. There is potential for debris to enter the water during construction, so conditions that ensure that debris or toxic material does not enter the water will be part of the decision. In conjunction with the authority authorized in SMC 25.05.675 B Construction Impacts, the general recommendations from Metro shall also be followed as conditioned below.

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 43.21.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).

SEPA AND SHORELINE CONDITIONS

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 a Construction Permit

1. A Best Managements Plan (BMPs) document shall be developed and approved by a land use planner. The BMP document shall include:

    a) A written description of the BMPS that will be used during the proposed work.

b) An emergency containment procedure for all toxic material that will be kept on site.

c) The requirement that all necessary equipment for containment and clean-up of this toxic material shall be stocked on the site and

d) The requirement that personnel working at the site shall be trained in the proper implementation of this plan.

e) 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. The conditions of this equipment shall be checked regularly for leaks and repaired as needed.

During Construction

2. 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 7:00 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 shells of the structure are enclosed. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.

3. The owner(s), builder(s), or responsible party(s) shall follow the BMPs developed to prevent debris and other deleterious material from entering the water during demolition and construction.

   a. 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.

   b. 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.

4. 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.

Prior to Issuance of a Construction Permit

5. No treated wood shall be used in any decking material.

   - If treated wood is proposed for other structures, this wood shall be professionally treated and completely cured using the best management practices developed by the Western Wood Preservers Institute (http://www.wwpinstitute.org/) before this wood is used for this project.

6. The final plan set shall include the note "light fixtures shall be shielded to avoid light spillage beyond the perimeter of the float and low wattage light bulbs to be used for any exterior lighting."

During Removal/Installation of Floating Home (During Construction)

7. No treated wood shall be used in the decking material.

   - If treated wood is proposed for other structures, this wood shall be professionally treated and completely cured using the best management practices developed by the Western Wood Preservers Institute (http://www.wwpinstitute.org/) before this wood is used for this project.

   - 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. This equipment shall be checked daily for evidence of leaks, if evidence of a leak is found, the leak shall be contained and further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

For the Life of the Project

8. Standard best management practices (BMPs) (such as using secondary receptacle containers when handling toxic material so that any spilled material is contained in the second receptacle rather than entering the water and using toxic material so that none of this material enters the water) shall be used to ensure that no petroleum products, other toxic substances, including household chemicals, herbicides pesticides, chemical fertilizers, miscellaneous debris and/or other deleterious materials are allowed to enter or leach into the water.

9. No in-water repair or maintenance to the exterior of the floating home is allowed below the surface of the water if such repair or maintenance involves toxic chemicals.

10. All exterior light fixtures shall be fully shielded to prevent light spillage beyond the perimeter of the float, and shall use low-wattage light bulbs.

Signature: (signature on file) Date: January 22, 2009
Joan S. Carson, Land Use Planner II
Department of Planning and Development

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