



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning & Development

Diane M. Sugimura, Director

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

Application Number: 3009644
Applicant Name: Janice Gedlund for Seattle Department of Transportation
Address of Proposal: 920 Westlake Avenue N

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development to allow street improvements in the Westlake Avenue and Valley Street rights-of-way. (Mercer Corridor Improvements Project, 800 Mercer Street). Project includes installation of sidewalks, street and pedestrian lighting, pedestrian amenities, bicycle lanes, landscaping and placement of underground utilities. Determination of non-significance provided by Seattle Department of Transportation.

Seattle Municipal Code (SMC) requires the following approvals:

Shoreline Substantial Development Permit – To allow right-of-way improvements in an Urban Stable (US) shoreline environment. SMC 23.60

SEPA – for conditioning only pursuant to SMC 25.05.

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

*The Seattle Department of Transportation (SDOT) issued a Mitigated Determination of Non-Significance on January 29, 2009

BACKGROUND DATA

Site Location and Zoning Designations

The Seattle Department of Transportation (SDOT) is proposing right-of-way improvements along a portion of Westlake Avenue North and Valley Street in the South Lake Union Neighborhood as part of the larger Mercer Corridor Project. Because this project will take place in the Urban Stable Shoreline environment of Lake Union, a Shoreline Substantial Development Permit is required. The majority of the larger Mercer Corridor Project will occur in the city-owned right-of-way and

requires no other permit. Most of the area of this project lies also with the Commercial 2-40 zone with a small portion within the Seattle Mixed 65 zone.

Project Description

A section of the Mercer Corridor Improvement project is located within the 200 foot Urban Stable shoreline zone of Lake Union. Improvements within the shoreline zone will occur within the right of way on Westlake Avenue North and Valley Street. These improvements include:

- reconstruction of the existing roadway on Westlake and Valley including the removal of existing asphalt and concrete surfaces. The roadway will be reconstructed with aggregate foundation and asphalt surfaces.
- stormwater management facilities will be installed including three “rain gardens” which connect to an existing outfall to Lake Union. The rain gardens (swales with amended soils and native plantings) provide a natural drainage feature for water quality treatment of a portion of Westlake Ave N.
- construction of widened sidewalks and improving the mixed use trail on the east side of Westlake
- installation of street and pedestrian lighting, and pedestrian amenities, undergrounding of overhead utilities, installation of trees and other landscaping, and an irrigation system tie-in to the existing Lake Union Park irrigation system
- new pedestrian crossings at Westlake and Valley and Ninth Avenue and Valley with change in pavement materials
- construction of bicycle lanes on Valley Street
- reducing the number of travel lanes on Valley Street
- removal of 95 parking spaces, and replacement of 80 parking spaces on Westlake and Valley

No work is proposed over water.

Public Comment

Public notice of the project application was given on March 19, 2009. The required public comment period ended on April 17, 2009. No comments were received by DPD from the public. The project file is available for review at the Public Resource Center located at 700 Fifth Ave, Suite 2000 (<http://www.seattle.gov/dpd/prc/location.htm>).

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

Section 23.60.030A 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:*

1. *The policies and procedures of Chapter 90.58 RCW;*
2. *The regulations of this Chapter; and*
3. *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.

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 seeks to protect 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 generally 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 proposed improvements would not adversely impact the state-wide interest of protecting the resources and ecology of the shoreline. The subject application is consistent with the procedures outlined in RCW 90.58.

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 ensuring 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, that also incorporates the provisions of Chapter 173-27, WAC. Title 23 of the Municipal Code is also referred to as the Land Use and Zoning Code. 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 which have also been set forth in the Land Use Code.

In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the relevant criteria set forth in the Land Use Code. The Shoreline Goals and Policies, part of the Seattle Comprehensive Plan, and the purpose and locational criteria for each shoreline environment must be considered. A proposal must be consistent with the general development standards of section 23.60.152, the specific standards of the shoreline environment and underlying zoning designation, any applicable special approval criteria, and the development standards for specific uses.

The proposed development actions occur on land classified as a waterfront lot (SMC 23.60.924) and is located within an Urban Stable (US) shoreline environment. The proposed improvements are wholly within the right-of-way in the US shoreline environment and the underlying C2-40 and SM-65 zones.

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 locational criteria for each shoreline environment designation contained in SMC 23.60.220. The policies encourage and support the retention and expansion of a transportation network that supports and enhances use of and access to the shorelines (please refer to Land Use

Policy LUG46). An area objective for this portion of Lake Union is to provide a maximum amount of public access in locations that do not conflict with water-dependent manufacturing uses (please refer to Area Objectives for Other Shorelines Areas, Policy LU269-2b). The purpose of the Urban Stable (US) environment as set forth in Section 23.60.220 C7 is to “provide opportunities of substantial numbers of people to enjoy the shorelines by encouraging water-dependent recreational uses....”. Views shall be provided mainly on public lands or in conformance with an area-wide Public Access Plan.

The proposed improvements to the Westlake Avenue N and Valley Street right-of-way will improve access to, and enjoyment of, the shoreline of Lake Union, as supported by both the purpose of the US shoreline environment and the policies set forth in the Land Use Element of the Comprehensive Plan.

SMC 23.60.152 - Development Standards for all Shoreline 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 are subject to the following:

- A. The location, design, construction and management of all shoreline developments and uses 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 applicable water quality management programs and regulatory agencies. Best management practices such as ... fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.
- B. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.
- C. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, vessel repair facilities, marine service stations and any use regularly servicing vessels with petroleum product capacities of ten thousand five hundred gallons (10,500) or more.
- D. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
- E. All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catchbasins or settling ponds, interceptor drains and planted buffers.
- F. All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.

- G. All shoreline developments and uses shall control erosion during project construction and operation.
- H. All shoreline developments and uses shall 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.
- I. All shoreline developments and uses shall 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.
- J. All shoreline developments and uses shall 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.
- K. 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.
- L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.
- M. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.
- N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.
- O. Navigation channels shall be kept free of hazardous or obstructing development or uses.
- P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corps of Engineers.

As proposed and as conditioned below, the project complies with the above shoreline development standards. The project, as proposed, decreases the overall amount of impervious surface. In addition, in accordance with Subsection E above, the project includes extensive landscaping and the installation of rain gardens that will control the quantity and mitigate the quality of storm water

flowing into Lake Union. As conditioned, the short-term construction related activities should have minimal effects on migratory fish routes and do not warrant further conditioning.

The Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. In conjunction with this effort; DPD developed a Director's Rule 2000-16, 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 adjacency of the Lake Union, and the proposed work associated with demolition and construction of street and utility structures, the potential exists for impacts to adjacent waters during construction. Therefore, approval of the substantial development permit will be conditioned to require application of construction best management practices (BMPs). Completion of the attachment to the Director's Rule and adherence to the measures outlined in the attachment shall constitute compliance with BMP measures.

SMC 23.60.870 - 882 - Development Standards for US Environment

All development must conform to the development standards in the US Shoreline Environment. Streets are permitted outright in the US environment as well as the repair and reconstruction of streets. There is no over water coverage proposed. View corridors, setbacks, public access are not affected or required by the proposal.

Chapter 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, the criteria and procedures of SMC Chapter 23.60 are consistency with WAC 173-27 and RCW 90.58.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit is **CONDITONALLY GRANTED** subject to the condition noted at the end of this document.

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).

Thus, as shown in the applicant's development plans, the Director has determined that the proposal is consistent with the criteria for a shoreline substantial development permit and may be conditionally approved.

ANALYSIS-SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant's agent, January 22, 2009 and annotated by the Land Use Planner. The information in the checklist, the supplemental information submitted by the applicant and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

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

Construction activities could result in the following adverse impacts: emissions from construction machinery and vehicles; increased dust levels associated with grading and demolition activities; increased noise levels; occasional disruption of adjacent vehicular traffic, and small increase in traffic and parking impacts due to construction workers' vehicles. All of these impacts are minor in scope and of short duration. Several construction-related impacts are mitigated by existing City codes and ordinances (such as the Stormwater, Grading and Drainage Control code and Street Use ordinance, and mitigating measures described above pursuant to the Shoreline Management Program) applicable to the project. Coordination with other public agencies (Department of Parks and Recreation, Seattle Public Utilities, and Metro transit) before and during construction will help ease construction-related impacts.

Long-Term Impacts

The project will have no adverse impact on public services. Adverse transportation impacts are projected to decrease as the project is completed due to improved circulation in the area. Recreation and aesthetics will be improved due to the improvements of pedestrian facilities and amenities and bike lanes.

Summary

In conclusion, no significant adverse effects on the environment are anticipated as a result of the proposal. No conditions are imposed as mitigation to specific impacts identified in the foregoing analysis, or to control impacts not regulated by codes or ordinances, per adopted City policies.

CONDITIONS – SEPA

None.

CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

During Construction.

1. The owner(s) and/or responsible party (ies) shall take care to prevent debris from entering the water during construction and to remove debris promptly if it does enter the water. Materials and construction methods shall be used which prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after construction. Appropriate equipment and material for hazardous material cleanup must be kept at the site.

Signature: _____ (signature on file) Date: April 23, 2009
Marti Stave, Land Use Planner
Department of Planning and Development

MS:lc