



City of Seattle

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: 3010172
Applicant Name: Mark Johnson
Address of Proposal: 9805 Bayard Ave NW

SUMMARY OF PROPOSED ACTION

Land Use Application to remove a portion of existing retaining wall (120 linear ft.) and to allow a 175 linear ft. retaining wall in an environmentally critical area. Project includes 48 cubic yards of grading.

The following approval is required:

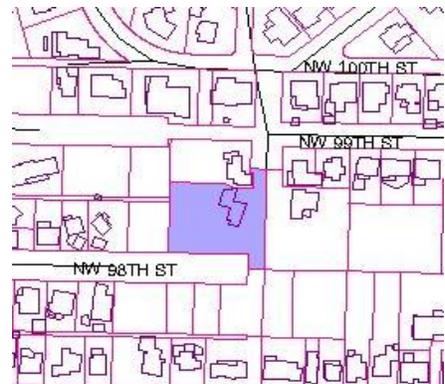
SEPA – Chapter 25.05 Seattle Municipal Code for excavation and construction in an Environmentally Critical Area.

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 Description

The site is an irregularly shaped lot (looking like a hat tipped on its side) taking access from Bayard Avenue Northwest from the north. The lot is located between Northwest 99th Street and Northwest 98th Street. The property is developed with an existing single-family home towards the northeasterly portion of the site, zoned Single Family 5,000 (SF 5000) and



is considered to be a steep slope environmentally critical area (ECA). The site slopes down from the northeast to southwest. The property borders along an unnamed stream corridor. The stream also maintains associated wetlands and provides a riparian corridor to Puget Sound. The wetland is considered to be off-site, but its wetland buffer does encroach onto the property as does the designated riparian corridor. Wetlands, wetland buffers and riparian corridors are considered to be ECAs regulated by the city of Seattle and are also included in this review.

Surrounding Area Description

The adjacent area is zoned SF 5000, developed with a variety of single-family homes and is characterized by steep slopes, potential slide, wetlands (including associated buffers) and a riparian corridor ECAs. The unnamed stream does flow to the northwest and drains the neighborhood directly into Puget Sound (approximately ½ mile away).

Project Description

The applicant had been managing their property by removing invasive vegetation species and replanting/restoring the hillside with native species. To enable their efforts, the applicant had graded portions of the hillside to construct a trail to provide better access and staging areas for the restoration project. This involved grading approximately 50 cubic yards of earth to construct the trail system down to the bottom of the slope. The cut and fill is currently retained by a number of 10" X 12" treated boards (varying in height from less than 2' to 4+') and supported by steel pin piles. This trail system begins about half way down the slope and switch backs it way to the bottom. All work was reported to be conducted by hand. Some backfilling was necessary and utilized sand, wood chips and a polystyrene mix. The trail's width varies from 5' wide at the top (where a temporary chute was used to deliver materials downslope) to about a minimum of 2½' wide near the bottom. Some trail work had also occurred on adjacent properties. Once at the bottom of the slope, the applicant noticed a seep emanating from the slope's base. This seep flows into the off-site wetland and stream system that ultimately flows into Puget Sound. This seep had been cleared by others to enhance its flow and now has started to create a void in the slope that causes minor slope failures and needs to be repaired so that it does not cause further slope failures and may prevent a larger failure below the applicant's single-family home.

The work that has been undertaken by the applicant is not specifically permitted without the appropriate permits or approvals. The scope of work also has triggered the need for environmental review. Because this work was not authorized by permit, the applicant was issued a Notice of Violation (Case #1014868) on February 14, 2008. The case was referred to the city of Seattle Law Department on June 5, 2008.

The applicant is now proposing to stabilize the seep, remove the trail system and restore the trail from the excavated condition to more of an informal trail system that may have been in existence before the excavated trails. The applicant has also indicated that they would like to continue the long-term hill-side restoration project, managing the slope area by removing invasive plant species and replacing them with native species. The Seattle Municipal Code (SMC 25.09.320 – Trees and Vegetation) generally prohibits the applicant's activities within landslide prone critical areas (including steep slopes), steep slope buffers, riparian corridors, wetlands and wetland

buffers. Vegetation removal activities can be allowed if it could be deemed consistent with normal and routine maintenance of up to 750 square feet if the area was lawfully maintained prior to May 9, 2006. The area that has been managed is more than 750 square feet.

Restoring or improving vegetation is also permissible, including removal of non-native vegetation and invasive plants and noxious weeds by hand to promote maintenance or creation of a naturally functioning condition that prevents erosion, protects water quality or provides diverse habitat when the area of work is equal to or greater than 1,500 square feet in area calculated cumulatively over a three-year period when the applicant files a plan with DPD that is consistent with SMC 25.09.329.B.1 and 2 and the plan keeps significant impact to a minimum, and the ***Director approves the plan prior to work being performed by or under the direction of a qualified professional*** (emphasis added). This work would also need to be reviewed under the city's SEPA rules (SMC 25.05.908.A) prior to commencement of the proposed work.

Because this work also includes an on-site wetland buffer and riparian watercourse and potentially impact an off-site wetland, the applicable ECA development standards also would apply to this proposal. These ECAs are more restrictive in what can be done within these ECAs and their associated buffers. Typically, little or no disturbance of the ECA and the buffers are permitted [see SMC 25.09.160.C.2 and 25.09.200.A.3.b(2)].

If the applicant wishes to continue maintaining their hillside, compliance with the ECA regulations is inherent. The applicant wishes to address the Notice of Violation and satisfy the city's current complaint. However, continued maintenance activities could result in future ECA regulation violations.

Public Comments

The application was deemed complete on April 8, 2009 and notice of application was sent on April 23, 2009. The 14-day public comment period ended on May 6, 2008. Public comments were not submitted in regard to this application.

ANALYSIS – SEPA

The project site is located in a potential slide, steep slope, wetland buffer and riparian corridor environmentally critical area, thus the application is not exempt from SEPA review. However, SMC 25.05.908 provides that the scope of environmental review of projects within critical area shall be limited to: 1) documenting whether the proposal is consistent with the City's Environmentally Critical Areas (ECA) regulations in SMC 25.09; and 2) Evaluating potentially significant impacts on the critical area resources not adequately addressed in the ECA regulations. This review includes identifying additional mitigation measures needed to protect the ECA in order to achieve consistency with SEPA and applicable environmental laws.

Environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant and dated April 2009. The information in that checklist and attachments, public comment, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The Department of Planning and Development has analyzed and annotated the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the file; and any public comments received through the public notice process. As indicated in the checklist, this action will result in adverse impacts to the environment. However, due to their temporary nature and limited effects, the impacts are not expected to be significant.

Codes and development regulations applicable to this proposed project will provide sufficient mitigation and no further conditioning or mitigation is warranted pursuant to the SEPA Overview Policy (SMC 25.05.665).

The SEPA Overview Policy (SMC 23.05.665) 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.D. 1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate

Short -Term Impacts

The following temporary construction-related impacts are expected: 1) temporary soils erosion; and 2) increased vibration from construction operations and equipment. These impacts are not considered significant because they are temporary and/or minor in scope (SMC 25.05794).

City codes and/or ordinances apply to the proposal and will provide adequate mitigation for some of the identified impacts. Specifically these are: 1) Street Use Ordinance (tracking of mud onto public streets, and obstruction of rights-of-way during construction); 2) Building Code (construction measures in general); 3) Regulations for Environmentally Critical Areas; and 4) Stormwater, Grading and Drainage Control Ordinance (storm water runoff, temporary soil erosion, and site excavation).

Earth

The ECA Ordinance and Director's Rule (DR) 33-2006 require submission of a soils report to evaluate the site conditions and provide recommendation for safe construction in areas with steep slopes, liquefaction zones, and/or a history of unstable soil conditions. Pursuant to this requirement the applicant submitted a geotechnical engineering study prepared by Aspect Consulting dated April 3, 2009. The report evaluates the soil and site conditions; the design of retaining walls; the design of pipe piles for support of retaining walls; provides recommendations

slope stability remediation, and spring remediation details. An earlier report prepared by Adapt Engineering, Inc dated April 21, 2008 was also attached and referred to in Aspect's report. The construction/grading plans, including erosion control techniques will be reviewed by DPD. Additional information required showing conformance with the ECA Ordinance will be required prior to issuance of grading permits. Based on DPD's geotechnical engineer's review of the materials modifications to the recommendations were necessary to comply with the city's regulations. Compliance with the city's ECA regulations will control and mitigate for the anticipated short term impacts from the work to further stabilize the void area, removal of the retaining walls, pin piles and the sand/polystyrene mix. Areas where the prior work will also be replanted will provide permanent erosion protection.

The Stormwater, Grading and Drainage Control Code requires preparation of a soils report to evaluate the site conditions and provide recommendations for safe construction on sites where grading will involve cuts or fills of greater than three feet in height or grading greater than 100 cubic yards of materials. The Stormwater, Grading and Drainage Control Code provides extensive conditioning authority and prescriptive construction methodology to assure safe construction techniques are used, therefore, no additional conditioning is warranted pursuant to SEPA policies.

Animal

The proposal includes grading, removal of existing vegetation and landscaping within the steep slope, wetland buffer and riparian corridor ECAs. The vegetation that was removed within these areas consisted of various invasive, non-native shrubs and bushes. The applicant replanted by hand this same equivalent area with a variety of native shrubs and bushes, which in turn will provide a better ecological function. No impervious areas were added within the ECA area. The prior work and the continuing vegetation management will continually improve the habitat values of the combined wetland buffer, riparian stream buffer and assist in stabilizing the steep slope ECAs. By replacing the invasive vegetation by hand with native species the vegetation will assist in preventing erosion, protect water quality and enhance the habitat value of the corridor. Short term impacts shall be kept to a minimum by not using mechanized procedures to restore the hillside, conducting the work by hand. The above cited regulations provide prescriptive methodologies to address the short term impacts, so no additional conditioning is warranted.

Long-term Impacts

After the restoration work is completed it is anticipated that the potential for long-term adverse environmental impacts will not occur as the applicant continues to manage the area by replacing dead plantings or invasive species that may grow back consistent with their work plan and the approved landscape plans. ECA regulations also require the applicant to provide a monitoring plan which will cover the next five growing seasons or the period to successfully carry out the plan, whichever is earlier. Mid-course corrections can be achieved as a result of reviewing the annual reports to prevent any long-term adverse environmental impacts. No further conditioning is warranted.

DECISION – SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

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

Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

CONDITIONS – SEPA

None.

Signature: (signature on file)
Craig Flamme, Land Use Planner
Department of Planning and Development,
Land Use Services

Date: March 29, 2010