



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:** 3010753  
**Applicant Name:** Jeff Sidebotham, Seaborn Pile Driving Co.  
**Address of Proposal:** 5665 NE Windermere Road

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Permit to allow a new 580 square foot pier and angled extension with 12 steel pilings and to allow a suspended residential cable tram with 125 feet of line in an environmentally critical area. Review includes landscaping, vegetation mitigation and utility upgrades. Review also includes construction of a 7,019-square-foot single family residence, a detached two-car garage, swimming pool, and a 1,414-square-foot cabana. Existing single family residence will be demolished.

The following approvals are required:

**Shoreline Substantial Development Permit** - to allow a pier in an Urban Residential (UR) / Conservancy Recreation (CR) shoreline environments pursuant to Seattle Municipal Codes 23.60.360 and 23.60.540 and to allow landscaping, a cabana, a cable tram and utilities in an Urban Residential shoreline environment pursuant to Seattle Municipal Codes 23.60.360.

**Environmental Critical Area Variance** – to allow development of up to 30% of the steep slope and buffer area (0% allowed without variance, 1.9% proposed) Section 25.09.180.E

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

**SEPA DETERMINATION:** [ ] Exempt [X] DNS [ ] MDNS [ ] EIS

[X] DNS with conditions

[ ] DNS involving non-exempt grading or demolition, or involving another agency with jurisdiction.

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## **BACKGROUND DATA**

### **Site location and description:**

The subject site is located at 5665 NE Windermere on the western shoreline of Lake Washington. The property is zoned Single Family 5000. The submerged portion of this site is located in the Conservancy Recreation (CR) shoreline environment. The dry land portion of the site within 200 feet of ordinary high water is located in the Urban Residential (UR) shoreline environment. The property is developed with a single family residence on the dry land portion, outside the Shoreline District.

The nearly rectangular site is bounded by single-family residences to the north and south and occupies approximately 1.37 acres of land. It features 150 feet of frontage along Northeast Windermere Road and a depth of approximately 390 feet. The property extends to the shoreline of Lake Washington. The northern upland portion of the lot covers nearly half the property and is mostly gently inclined toward the lake about 5 percent to 10 percent. A central steep slope is adjacent to the northern upland section. This area declines about 70 percent to 80 percent for approximately 65 feet of elevation change and meets the definition of an environmentally critical area (steep slope) under Seattle's regulations for Environmentally Critical Areas. A southern lowland area between the base of the steep slope and Lake Washington covers approximately one-quarter of the property, and slopes gently toward the Lake.

Originally, this project number (3010753) was only for the proposed pier and a separate project number (3010742) comprised the actions requiring an ECA steep slope variance. The entire project, including the demolition of the existing house and construction of the new residence, was later merged into one project number (3010753) and noticed as described in this decision.

### **Proposal Description:**

The proposal for the upper region of the property includes demolishing the existing house with attached garage, and the construction of a new 2-story single family residence, a detached garage with daylight basement, a swimming pool, and associated landscaping.

The proposal for the lower region of the property includes building a new pier, a new cabana and related utilities and access features. Landscaping in this area includes extensive native plant revegetation as well as installation of hardscape, decking and walkways.

Within the steep slope area and buffers, the proposal is limited to installation of a cable tram and utility routes in order to functionally connect the upper and lower regions as well as landscaping and vegetation mitigation measures.

The proposal also includes the installation of a 580 square foot pier and angled extension, consisting of two (2) 6" steel piles, six (6) 8" steel piles, four (4) 10" steel piles and a 95-foot long by 4-foot wide pier and a 100-square-foot angled extension. The pier and extension will be fully grouted for light transmission to the water and aquatic habitat.

Shoreline Substantial Development and SEPA review

A shoreline substantial development permit is required for this entire project because the project includes construction of a new pier that exceeds a fair market value of \$10,000 and therefore is not exempt from obtaining a shoreline substantial development permit per SMC 23.60.020 C 7 b. Per SMC 23.60.020 B 4, if any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development.

This entire project includes a number of development features, some of which are within the Shoreline District (i.e., within 200 feet from ordinary high water) and some of which are outside the Shoreline District. The primary actions outside the Shoreline District are the demolition of the existing residence and the construction of the new single family residence, detached garage and associated landscaping in the upper region of the property. Development within the Shoreline District includes the construction of the pier, cabana, cable tram, utility routes, and landscaping. The use and development standards of the shoreline code (SMC 23.60) apply only to that part of the development that occurs with the Shoreline District unless the underlying zoning requires the entire development to comply with all or part of this chapter, per SMC 23.60.022.

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05) due to the fact that the total proposed development coverage of this project exceeds 9,000 square feet and cannot be categorically exempt from SEPA review per SMC 25.09.908 C 1.

Public Comment:

The original public notice of the application was limited to the pier construction and was published on Dec. 21, 2009, and the required public comment period ended on January 19, 2010. The project description was revised to include the entire project as described above and the second public notice was published on March 1, 2010 and the required public comment period ended on March 30, 2010. Two public comments were received. The Muckleshoot Tribe provided comments and raised concerns about adequate habitat mitigation for impacts to the shoreline environment. Another comment raised concerns about the proper setback for the dock.

**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 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 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 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 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 Regulation 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 SSMP 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 (SSMP 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 SSMP 23.60.004, and meet development standards for all shoreline environments established in SMC 23.60.152 as well as the criteria and development standards for the shoreline environment in which the site is located, any applicable special approval criteria and the development standards for specific uses.

Each of these elements is evaluated below. The shoreline designations for the area of work are Urban Residential and Conservancy Recreation (UR and CR at SMC 23.60.220).

### **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 purpose of the UR and CR environments are stated in SMC 23.60.220.C.6 and C3, respectively. The applicable sections of these regulations to the current proposal are:

- in the Urban Residential Environment to protect residential areas
- in the Conservancy Recreation Environment to protect areas for environmentally related purposes, such as public and private parks, aquaculture areas, residential piers...

### **SMC 23.60.064 - Procedures for Obtaining Shoreline Substantial Development Permits**

This application has followed the procedural requirements for a Master Use Permit as specified in subsection A. SMC 23.60.064 also 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).

SMC 23.60.064C. - In evaluating whether a development which requires a substantial development permit, conditional use permit, variance permit or special use authorization meets the applicable criteria, the Director shall determine that:

1. The proposed use is not prohibited in the shoreline environment(s) and underlying zone(s) in which it would be located;

Boat moorage, accessory to a residential use, and accessory residential uses such as the cabana, related utilities, tram and landscaping are permitted uses in the SF-5000 zone. A residential pier is permitted outright in the CR Environment (SMC 23.60.362) and the other proposed residential accessory uses are permitted as normal appurtenances to a single-family residence in the UR Environment (SMC 23.60.540).

2. The development meets the general development standards and any applicable specific development standards set forth in Subchapter III, the development standards for the shoreline environment in which it is located, and any applicable development standards of the underlying zoning, except where a variance from a specific standard has been applied for; and

The project meets standards for residential piers per SMC 23.60.240. The conformance of the project with the general development standards listed at SMC 23.60.152 is also discussed below.

3. If the development or use requires a conditional use, variance, or special use approval, the project meets the criteria for the same established in Sections 23.60.034, 23.60.036 or 23.60.032, respectively.

The proposal does not trigger need for a shoreline conditional use, variance or special use approval.

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environment. 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. These general standards of the SMP state, in part, that all shoreline development 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 paving and berming of drum storage areas, fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.
- not release oil, chemicals or other hazardous materials onto or into the water...
- 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;
- 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;
- 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; and
- be located, constructed, and operated so as not to be a hazard to public health and safety.

The proposal, as designed and conditioned below including the proposed mitigation, would not adversely affect the quality and quantity of surface and ground water on and adjacent to the site on a long-term basis. No planned discharge of solid wastes would occur. Spillage of petroleum or diesel products must be avoided and contained should it occur. No intentional release of oil, chemicals, or other hazardous materials shall occur. Erosion would not result from the development. Impacts to fish and wildlife and shoreline processes are minimized. Long-term impacts to surrounding land and water uses are also minimized. No hazard to public safety or health is proposed by this development. Navigation channels will not be affected. No submerged public right-of-way or view corridors would be significantly affected. The conditions noted at the end of this report, which are based on the criteria of SSMP 23.60.152, ensure that the project conforms to the goals and regulations of the Seattle Shoreline Master Program. The public interest suffers no substantial detrimental effect from the proposal.

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 decking on the new 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 treated wood shall be used in the decking material. No artificial lighting will be included in the pier design or during its use.
- No pier fascia shall be installed as it blocks natural light from reaching under the pier.
- Any treatment of any material (e.g., steel, aluminum, wood) on this pier shall be non-leaching and non-toxic to the aquatic 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.
- As mitigation for the impacts of the pier and the increased impervious surfaces within 100 feet Ordinary High Water, existing invasive plant species in the 100-foot Shoreline habitat buffer will be removed and this area will be extensively replanted with native vegetation per landscape plans on Sheets L. 1.1, L 2.0 and L 2.1.

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 improve shoreline habitat conditions for aquatic species utilizing this area while providing food sources and reduce predation risk for migrating juvenile salmon that utilize the nearshore habitat at this location.

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

These standards regulate the size and location of piers for residential uses. The proposed pier would be consistent with these standards.

#### SMC 23.60.390 - Development Standards for CR Shoreline Environments

The development standards set forth in the Conservancy Recreation Shoreline Environment relate to minimizing adverse impacts to natural areas and to enhance the enjoyment by the public of those natural areas. The applicant has agreed to provide habitat mitigation in the form of removal of invasive vegetation and planting of native vegetation along the shoreline to provide shading and food sources for migrating and rearing salmon. Also, the proposed pier will be constructed of a grated decking material to allow light transmission to the water for aquatic vegetation growth and reduce predation potential on migrating salmon.

#### SMC 23.60.570 – Development standards for the UR Environment

The proposal conforms to the development standards in the UR Shoreline Environment.

All developments in the UR environment shall be located and designed to minimize disturbance of any critical habitat area.

The development as proposed includes removal of non-native and invasive vegetation and installation of extensive native vegetation planting (i.e., 84% of the area between 10 feet from the shoreline and 100 feet from the shoreline will be planted with native vegetation) to compensate for the proposed increase in impervious surface area. The project, as conditioned below, will comply with the above shoreline development standards and should have minimal effects on the shoreline habitat ecological functions, include migratory fish routes.

As noted above, Seattle's Municipal Code provides criteria for the review and conditioning of shoreline substantial development permits. Thus, as shown in the applicant's development plans the Director has determined that the proposal is consistent with the criteria of SMC [23.60.030A.2](#) and may be conditionally granted as noted at the end of this decision.

### **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). Since DOE has approved the Seattle Shoreline Master Program, any project consistent with the criteria and procedures of SMC Chapter 23.60 is also consistent with WAC 173-14 and RCW 90.58.

### **CONCLUSION**

Development requiring a Shoreline Substantial Development Permit can only be approved if it conforms to the policies and procedures of the WAC, RCW and with the regulations of Chapter 23.60, Seattle Shoreline Master Program. The specific standards for development in the shoreline environments will be met by the proposed development.

The project as proposed and conditioned meets the specific standards for development in the UR/CR environments. It also conforms to the general development standards, as well as the requirements of the underlying zone.

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**. Conditions are listed at the end of this report.

### **ANALYSIS – ECA VARIANCE**

The proposal requires an ECA Variance due to the proposed intrusion into the steep slope area for utilities and access measures (pedestrian cable tram) in order to connect the upper and lower regions of the property.

Pursuant to SMC 25.09.180.E the Director may reduce the steep slope area buffer and authorize limited development in the steep slope area and buffer only when all of the facts and conditions stated in the numbered paragraphs below are found to exist:

**SMC 25.09.180. E. Steep Slope Area Variance.**

1. The Director may reduce the steep slope area buffer and may authorize limited intrusion into the steep slope area and steep slope buffer to the extent allowed in subsection E2 only when the applicant qualifies for a variance by demonstrating that:

a. the lot where the steep slope or steep slope buffer is located was in existence before October 31, 1992; and

The subject lot existed as a legal building site prior to October 31, 1992.

b. the proposed development otherwise meets the criteria for granting a variance under Section 25.09.280 ~~EE~~ B, except that reducing the front or rear yard or setbacks will not both mitigate the hardship and maintain the full steep slope area buffer.

Modifying the yard and setback requirement would not resolve access and utility issues between the upper and lower portions of the principal building area on the site. The underlying zoning and Shoreline regulations permit development in the lower region but the ECA Ordinance (without a variance) causes unnecessary hardship given the extent and location of the slope on the site. This limits the ability to serve and safely access the lower region of the property. Responses to criteria in SMC 25.09.280 B are addressed below.

2. If any buffer reduction or development in the critical area is authorized by a variance under subsection E1, it shall be the minimum to afford relief from the hardship and shall be in the following sequence of priority:

a. reduce the yards and setbacks, to the extent reducing the yards or setbacks is not injurious to safety;

The applicant proposes no change to the required yards and setbacks on the property. Per covenants on the parcel the side yard setback is 10 feet from the property line and the front yard setback is 50 feet measured from the streetline. The proposed development meets and exceeds SMC requirements. Modifying the yard and setback requirement would not resolve access and utility issues between the upper and lower portion of the principal building area on the site.

b. reduce the steep slope area buffer;

The applicant proposes no change to the required steep slope buffer at the top or toe of the slope. Modifying the buffer location would not resolve access and utility issues between the upper and lower portion of the principal building area on the site.

c. allow an intrusion into not more than thirty percent (30%) of the steep slope area.

The proposed residential development on this site is designed around two large flat regions within the principle building area of the lot: an upper region near NE Windermere Road, and a lower region adjacent to Lake Washington. These two large areas are separated by a steep slope extending the full width (150 feet) of the property. The features that require an intrusion into the buffer and slope are limited to utilities and access measures that functionally connect the two regions of the site. The proposed intrusion into the steep slope and buffer is the minimum necessary to resolve the access and utility issue.

The variance application provides relief for access and service hardship, using solutions engineered to limit intrusion into the ECA steep slope and buffer to an absolute minimum. The proposed pedestrian cable tram provides lake access while spanning over the hillside to the fullest extent possible, minimizing contact with the slope and buffer and minimizing hillside vegetation removal and disturbance. The base termination of the tram is completely outside the ECA steep slope and buffer. The tram's upper foundation and landing extends into the steep slope buffer and slope to provide the necessary clearance between the cables and the existing slope. To minimize the ECA intrusion the top of the tram cantilevers from a foundation to reduce the need for excavation near the top of the slope. The proposed upper tram landing is the minimum width necessary for the tram car requirements and the proposed foundation minimizes the required excavation and disturbance within the buffer.

The proposed underground utilities crossing the site will be bored beneath the steep slope to avoid any disturbance to the surface soil and hillside vegetation. A proposed surface mount stormwater line will ensure all storm water from the upper lot site development will be collected and diverted away from the hillside to Lake Washington. The type of pipe used in combination with soil anchors will provide an extremely durable drainage solution that can be easily maintained and inspected at anytime. The surface mounted drainpipe will eliminate the need for trenching on the hillside and minimizes disturbance to the existing vegetation.

To total proposed intrusion into the steep slope is less than 2% of the ECA steep slope onsite. The proposed intrusion is the minimum necessary to resolve access and service hardship.

The following are criteria and responses for granting a variance found in SMC 25.09.280.B:

1. *The lot has been in existence as a legal building site prior to October 31, 1992.*

The subject lot existed as a legal building site prior to October 31, 1992.

2. *Because of the location of the subject property in or abutting an environmentally critical area or areas and the size and extent of any required environmentally critical areas buffer, the strict application of the applicable yard or setback requirements of Title 23 would cause unnecessary hardship; and*

Modifying the yard and setback requirement would not resolve access and utility issues between the upper and lower portions of the principal building area on the site. The underlying zoning and Shoreline regulations permit development in the lower region but the ECA Ordinance (without a variance) causes unnecessary hardship given the extent and location of the slope on the site. This limits the ability to serve and safely access the lower region of the property.

3. The requested variance does not go beyond the minimum to stay out of the full width of the riparian management area or required buffer and to afford relief; and

There is no riparian management area on the lot. The proposed intrusion into the steep slope and buffer is the minimum necessary to resolve the access and utility issue, as described above.

4. The granting of the variance will not be injurious to safety or to the property or improvements in the zone or vicinity in which the property is located; and

The applicant has provided a geotechnical report, dated December 10, 2009, which provides findings and preliminary recommendations for development on the site in the steep slope area and buffer. DPD has reviewed the report and letter and finds the analysis to be acceptable. Assuming development is conducted in accordance with these recommendations such disturbance within the steep slope buffer should not be injurious to the property or to neighboring properties.

5. The yard or setback reduction will not result in a development that is materially detrimental to the character, design and streetscape of the surrounding neighborhood, considering such factors as height, bulk, scale, yards, pedestrian environment, and amount of vegetation remaining; and

The applicants propose no change to the standard yard setback or required ECA buffer setback. The proposed residential development area is far below the allowable height and allowable area for this site.

6. The requested variance would be consistent with the spirit and purpose of the environmentally critical policies and regulations.

The environmentally critical policies and regulations were created to preserve existing environmentally critical areas while allowing reasonable use of existing parcels. The applicant proposes to build the cable tram so that it spans over the hillside to the fullest extent possible, minimizing contact with the slope and buffer and minimizing hillside vegetation removal. The top of the tram cantilevers from a foundation to reduce the need for excavation near the top of the slope. The base termination of the tram is completely outside the ECA steep slope and buffer.

The proposed underground utilities will be bored beneath the steep slope to avoid any disturbance to the surface soil and hillside vegetation. A surface mount stormwater line will ensure all storm water from the site development above is collected and diverted away from the hillside to Lake Washington. The type of pipe used in combination with soil anchors will provide an extremely durable drainage solution that can be easily maintained and inspected at anytime. The applicant also proposes to remove invasive non-native vegetation on site and replace with additional native trees and vegetation. The proposal would be consistent with the spirit and purpose of the environmentally critical policies and regulations, subject to the Conditions section below.

## **DECISION – VARIANCE**

DPD **CONDITIONALLY APPROVES** the requested variance to allow a cable tram line and utility routes within the steep slope and buffers.

## **ANALYSIS - SEPA**

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 dated August 14, 2009, and February 22, 2010. The information in the checklist, public comment, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The development site is located within several Environmentally Critical Areas (ECAs), 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 areas shall be limited to:

- 1) Documenting whether the proposal is consistent with the City's ECA regulations in SMC 25.09; and
- 2) Evaluating potentially significant impacts on the critical area resource, in this case landslide-prone, steep slope and known slide areas, 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 other applicable environmental laws. Environmental impacts of the project that may affect the geologically hazardous area include an increased rate of stormwater runoff, loss of vegetation and increased water pollution.

The SEPA Overview Policy (SMC 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, that "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 D1-7) mitigation can be considered.

### **Short-term Impacts**

The following temporary or construction-related impacts are expected: risk of erosion during periods of earth disturbance, the possibility of construction related landslide damage to the bluff and temporary loss of vegetation.

Several adopted codes and Director's Rules provide mitigation for some of the identified impacts. Under SMC 25.09.060 G grading in environmentally critical areas is limited to a

window between April 1<sup>st</sup> and October 31<sup>st</sup>. Due to the fact that grading will be undertaken during construction, additional analysis of earth and grading impacts is warranted.

### Earth/Soils

The ECA Ordinance and Directors Rule (DR) 33-2006 and 3-2007 require submission of a soils report to evaluate the site conditions and provide recommendations for safe construction in areas with landslide potential and/or a history of unstable soil conditions. A “Geotechnical Engineering Study,” prepared by Robert Ward, PE, dated Dec. 10, 2009, was submitted with this application and is undergoing separate geotechnical review by DPD. The construction plans, including shoring of excavations as needed and erosion control techniques are receiving separate review by DPD. Any additional information showing conformance with applicable ordinances and codes (ECA ordinance, The Stormwater, Grading and Drainage Control Code, DR 33-2006 and 3-2007) will be required prior to issuance of building permits. Applicable codes and ordinances provide extensive conditioning authority and prescriptive construction methodology to assure safe construction techniques are utilized; therefore, compliance with these applicable codes and ordinances will reduce or eliminate most short-term impacts to the ECA and no additional conditioning is warranted pursuant to SEPA policies.

### Long-term Impacts

Long-term or use related impacts are also anticipated from the proposal and include: an increase in overwater coverage and increased surface water runoff due to greater site coverage by impervious surfaces and reduced canopy coverage until the replacement trees have achieved a mature size. These long-term impacts are potentially significant without mitigation; therefore, merit a detailed discussion of the impacts and the required mitigation.

### Greenhouse Gas Emissions and other Impacts

Emissions from the generation of greenhouse gas gases due to the increased energy and transportation demands may be adverse but are not expected to be significant due to the relatively minor contribution of emissions from this specific project. The other impacts such as but not limited to, increased ambient noise and increased demand on public services and utilities are mitigated by codes and are not sufficiently adverse to warrant further mitigation by condition.

### Water Quality and 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.*

Clearly identified long-term impacts on juvenile Chinook salmon and the aquatic environment include an increase in impervious surface near the shoreline and increase in overwater coverage and number of piles present in the aquatic habitat of this threatened species. Increase in impervious surface can reduce habitat quality in the shoreline environment by increasing surface

water runoff and reducing water quality while an increase in overwater coverage and piles impact the quality of natural habitat of juvenile Chinook salmon and coastal-Puget Sound bull trout by creating shading and reducing the area of substrate that is used for benthic and epibenthic species, which are a food source for salmonids.

As provided by SMC 25.05.350 A, when making a threshold determination the lead agency may consider mitigation measures that the agency or applicant will implement. Proposed mitigation measures may allow the lead agency to issue a Determination of Non-Significance (DNS). These mitigation measures can be in the form of clarification of the proposal, changes to the proposal, or the project may be conditioned to include the mitigation measures. The applicant has included mitigation measures in the project to offset the impacts of the proposed work as shown on Plan Sheets and DPD has imposed conditions on this project. These mitigation measures and conditions are listed below.

- Installing a thru-flow grated surface for the pier and installing steel piles;
- Removing non-native and invasive plant species directly adjacent to the shoreline and within 100 feet of the shoreline at the subject property;
- Planting native vegetation directly adjacent to the shoreline and within 100 feet of the shoreline at the subject property;

Each of these mitigation measures and conditions are believed to minimize impacts on juvenile and adult salmonid habitat at the site and improve the aquatic habitat for juvenile Chinook salmon and other species. Collectively these measures will minimize the dark areas that are created by piers and floats, minimize and mitigate the impacts to the substrate and increase the allochthonous input to the system from terrestrial vegetation. This in turn will provide more food for juvenile salmonids and should remove the barrier impact of structures on migration and rearing by minimizing the shading cause by the piers thus allowing the juvenile fish to remain in the shallow water during their migration and rearing reducing the juvenile Chinooks' vulnerability to predation in the nearshore environment.

Collectively, the mitigation measures described above and conditions placed on the proposal as a result of the Shoreline Substantial Development will provide adequate mitigation.

## **DECISION**

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.

- [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 43.21.030(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 – VARIANCE**

### *Prior to and/or During Construction*

1. All grading, demolition, and other construction related earthwork must follow the recommendations contained in the geotechnical reports and memoranda prepared by Geotech Consultants Inc.

## **CONDITIONS – SEPA and Shoreline Substantial Development Permit**

### *Prior to Issuance of a Master Use Permit*

2. Permanent visible markers shall be placed along the edge of the nondisturbance area as approved on the site plan. The markers shall be either reinforcing steel or metal pipe driven securely into the ground with a brass cap affixed to the top similar to survey monuments. The brass cap shall be visible at the ground surface and indicate the purpose of the marker. Markers shall be placed at all points along the edge of the nondisturbance line where the line changes direction. Markers must be in place before issuance of this Master Use permit. Markers should be detailed in accordance with description contained in Director's Rule 3-94.
3. Submit a recorded copy of the ECA Covenant to the Land Use Planner.

### *Prior to Issuance of Any Construction Permits*

The owner and/or responsible party shall:

4. Show on the site plan the location of permanent ECA markers, and the landscape plan and other mitigation measures described above.
5. Show on building plans the location of a temporary, durable, highly visible construction fence at the boundary between the construction activity area and areas of steep slope and steep slope buffer which are to be left undisturbed. (25.09.060)

### *During Construction*

6. Landscape plan as shown on Sheets L.1.1, L 2.0 and L 2.1 shall be installed.
7. Any damage to vegetation caused by construction shall be mitigated/replaced at the completion of the project. Any vegetation must be replaced with native vegetation per SMC 25.09.200.A
8. Appropriate best management practices (BMPs) shall be employed to prevent material from entering Lake Washington during construction of the new pier. BMPs shall include the deployment of a turbidity curtain and debris boom surrounding the project area during in-water and over-water work to contain any debris, suspended sediments, or

spills caused by construction activities. Materials to be disposed of shall be contained on site and then be discarded at an appropriate upland facility.

9. The use of 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.
10. Care shall be taken by the owner(s), builder(s), or responsible party(s) to prevent toxic materials, petrochemicals and other pollutants from entering surface water during the proposed repair work. Spill prevention and response plan and material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.
11. The appropriate Best Management Practices (BMPs) shall be employed to prevent erosion and sediment from entering Lake Washington during construction and landscaping. Any debris that enters the water during construction shall be collected and disposed of in an appropriate upland facility.
12. The appropriate equipment and material for hazardous material clean up shall be kept at the site.
13. No fascia shall be installed in the new pier because it blocks natural light from reaching under the pier.
14. Any treatment of material on this pier (e.g., wood, aluminum, steel) shall be non-leaching and non-toxic to the estuarine and marine environment.
15. 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.

Life of the project

16. The area adjacent to the shoreline that is enhanced with native vegetation shall be maintained. Any non-native vegetation shall be removed manually; no chemicals can be used to remove this vegetation.
17. No chemical fertilizers, pesticides or herbicides shall be utilized in the newly planted areas.
18. Maintain the shallow water and nearshore area clear of debris during the life of the project.

Signature: \_\_\_\_\_ (signature on file) Date: June 24, 2010  
Ben Perkowski, Land Use Planner  
Department of Planning and Development