



City of Seattle

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**Department of Planning and Development**  
Diane M. Sugimura, Director

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

**Application Number:** 3011748  
**Applicant Name:** Meredith Wirsching  
**Address of Proposal:** 1341 N. Northlake Way

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Application for removal of an existing 3,762 sq. ft. over-water boat shed and placement of four floating platforms accessory to the Diver's Institute of Technology (total of 3,726 sq. ft.). The barges are being relocated from their existing site at 4315 11th Avenue NW.

Seattle Municipal Code (SMC) requires the following approvals:

**Shoreline Substantial Development Permit:** to allow the placement of four floats totaling 3781 square feet in an Urban Maritime (UM) Shoreline Environment. (Section 23.60.020 Seattle Municipal Code)

**SEPA – Environmental Determination.** (Chapter 25.05 Seattle Municipal Code)

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

[ ] DNS with conditions

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

## **BACKGROUND INFORMATION**

### **Site Location and Description**

The subject site is located at 1341 N. Northlake Way on the north shore of Lake Union. The property is zoned Industrial Commercial – IC/45'. The submerged and dry-land portions of this site are located in the Urban Maritime (UM) shoreline environment. The property is developed with a four-story office/warehouse/shop complex and parking used for commercial, marine-related businesses. A number of vessels undergoing maintenance and a large covered boathouse are moored alongside the upland area. The property to the west is a private marina used for boat moorage, sales, and service. The property to the east is a private boat yard and boat moorage. To the north is a N. Northlake Way and to the south is Lake Union.

### **The Proposal**

The applicant proposes to move four small floating platforms totaling 3,781 square feet from their existing location at another marina on Lake Union to the site at 1341 N. Northlake Way. Three of the floats support single-story accessory structures. An existing 3,822 square foot boathouse will be removed from the site to make room for the floats. The effect will be a net reduction of 41 square feet of over-water coverage at this site.

As the fair market value of the floats exceeds \$10,000.00, the development is not exempt from obtaining a shoreline substantial development permit. Due to the location of the work being over water, environmental review under Seattle's SEPA ordinance is also required.

### **PUBLIC COMMENT:**

Public notice of the applications was published on January 6<sup>th</sup>, 2011. The comment period was extended by two weeks in response a request from the Muckleshoot Tribe. The public comment period ended on February 18th, 2011. Comments/questions from the Muckleshoot Tribe regarding the logistics of the moving of the floats and details of habitat mitigation were received Feb 22<sup>nd</sup>, 2011.

### **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 SMC 23.60.030 (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use permit) or conditioning that is necessary to protect and enhance the shorelines area (SMC 23.60.064). In order to obtain a shoreline substantial development permit, the applicant must show that the proposal is consistent with the shoreline policies established in SMC 23.60.004, 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 in the order they are listed in the Shoreline Master Program. The shoreline designation for the area of work is Urban Maritime (UM at SMC).

### **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 UM environments, as stated in SMC 23.60.220.C.9, is "...to to preserve areas for water-dependent and water-related uses while still providing some views of the water from adjacent streets and upland residential streets."

### **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;
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
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.

### **Evaluation:**

The four floats serve as support space for Divers Institute of Technology's practical instruction for its diver training programs. Water-dependent or water-related colleges, institutes for advanced study and vocational schools are allowed outright the Urban Maritime Environment (SMC 23.60.720). The placement of the four floats is considered ancillary to Divers Institute's existing current use on the parcel.

These general standards listed in SMC 23.60.152 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 involves towing away an existing floating boathouse and securing four existing floats in its former place, resulting in a net decrease in over-water coverage of 41 square feet. No in-water or over-water construction or structural alterations are necessary to perform this action. All offsite movement of the floats will occur in designated travel lanes within the Ship Canal and Lake Union. Future use of the floats will be as classrooms to support diver instruction provided by Diver's Institute. This implementation of the float swap and future use of the newly placed floats is not expected to adversely affect water quality, water quantity, or habitat on or adjacent to the site on a short or long-term basis. The applicant has provided a suite of customized Best Management Practices (BMPs) on plan sheet CS4, which provide further assurance that that act of moving and exchanging the floats, and future use of the floats, will be consistent with the general standards in SMC 23.60.152.

Specific development standards set forth in the Urban Maritime Shoreline Environment under SMC 23.60 Subchapter XIII The Urban Maritime Environment, Part 2, relate to regulating structure height, development coverage, view corridors, and public access.

SMC 23.60.752.A provides a standard height limit of 45 feet; the tallest structure on the floats is less than 15 feet in height.

SMC 23.60.754.A.1 limits coverage of the submerged portion of the lot to 50 percent. According to figures given on plan sheet CS1, 9,564 square feet of 21,126 (45 %) of submerged land would be covered after placement of the four floats.

SMC 23.60.754.A.2 limits coverage by structures of the dry-land portion of the lot to 75 percent. According to figures given on plan sheet CS1, 8,242 square feet of 20,946 (39 %) of available dry-land is covered by existing structures. No increase is proposed.

SMC 23.60.756.A requires a view corridor in the UM Environment of not less than 15 percent of the width of the lot be provided and maintained on all waterfront lots occupied by a water-dependent or water-related use. According to figures provide on plan sheet CS1, a view corridor of 19.5 feet must be maintained to meet this standard. This view corridor will be maintained on the west portion of lot, which will not contain any structure on dry or submerged land.

SMC 23.60.758.B.2 stipulates that water-dependent uses other than marinas and water-related uses located on private lots are not required to provide public access. As the use of the proposed floats is considered water-dependent, provision of public access is not required.

No conditional use or variance required for this proposal, since the use is allowed in the UM Environment and all general and specific development standards will be met.

### **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.

Pursuant to the Director's authority under Seattle's Shoreline Master Program to ensure that development proposals are consistent with the policies and procedures, and conform to specific development standards of the underlying zone, and having established that the proposed use and development are consistent with the Seattle Shoreline Program, the proposal is approved with the conditions listed below.

### **DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT**

The Shoreline Substantial Development permit is **CONDITIONALLY GRANTED**. Conditions are listed at the end of this report.

## ANALYSIS - SEPA

Disclosure of the potential impacts from this project was made in the following documents the Environmental Checklist dated November 23<sup>rd</sup>, 2010. The application for Shoreline Substantial Development Permits 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, and 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 or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

### Short-term Impacts

The proposal involves towing away an existing floating boathouse and securing four existing floats in its former place, resulting in a net decrease in over-water coverage of 41 square feet. No in-water or over-water construction or structural alterations are necessary to perform this action. The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in exhaust from the towing vessel(s), minor disturbance of shorelines and displacement of some fish wildlife species due to increased noise and wake from the movement of floats and towing vessels. Due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC 25.05.794). Although not significant, these impacts are adverse and, in some cases, mitigation may be warranted.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); and State Air Quality Codes administered by the Puget Sound Clean Air Agency (air quality). In addition Federal and State regulations and permitting authority (Section 10 Permit, 404 Permit from the Army Corps and HPA permit from Washington Department of Fish and Wildlife) are effective to control short-term impacts on water quality. Compliance with these codes and/or ordinances will lessen the environmental impacts of the proposed project.

The proposed construction work will take place in and adjacent to the waters of Lake Union. As such, there exists the potential for debris and other deleterious material to enter the water during this proposed work. Best management practices (BMPs) will be required to decrease the probability of debris or other deleterious material from entering the water during the proposed work. Any accidental discharge of such material must be immediately contained on site and then disposed of at the appropriate upland facility. In-water construction activity will be restricted to appropriate work windows for fish protection set by Washington Department of Fish and Wildlife and the US Army Corps of Engineers.

Use of towing vessels poses some potential danger to water and near shore contamination. The contamination from spills could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, spill prevention and response procedures have been incorporated into Best Management Practices have been provided to comply the general development standards of the City's Shoreline Master Program (SMC 23.60). No further mitigation under SEPA is deemed necessary.

Construction activities include construction worker commutes and towing vessel trips. These activities 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 minor in scope and short in duration, and do not warrant mitigation under SEPA.

### Long Term Impacts

Adverse long-term or use related impacts are not anticipated from the proposal. As mentioned above, after the new floats are installed, there will be slight decrease in over-water coverage from the existing condition. Use activities on the floats are related to providing practical dive instruction to students. No further physical alteration to the structures or the shoreline environment itself is anticipated from this use. Since no long-term adverse impacts are expected, no additional mitigation under SEPA is required.

### **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 – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

#### *During Construction:*

The following condition(s) 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.

1. Work waterward of ordinary high water shall be restricted to work windows established by Washington Department of Fish and Wildlife and US Army Corps of Engineers.

*For the Life of the Project*

2. All Best Management Practices provide on plan sheet CS4 shall be employed for the life of the project.

Signature: (signature on file)  
Seth Amrhein, Senior Environmental Analyst  
Department of Planning and Development

Date: March 24, 2011