



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**

**Project Number:** 3011901  
**Applicant Name:** Michael Whalen, AIA  
**Address of Proposal:** 922 McGilvra BLVD E

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Application to replace 250 square feet of the existing bulkhead, removal of existing sand volleyball court and construction of a 1,800 square foot pickleball court in an environmentally critical area (Seattle Tennis Club). Project also includes 573 cubic yards of grading.

Seattle Municipal Code (SMC) requires the following approvals:

**Shoreline Substantial Development Permit:** to allow site improvements and bulkhead replacement in an Urban Residential and Conservancy Recreation Environment.  
(Section 23.60.020 Seattle Municipal Code)

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

**SEPA DETERMINATION:**  Exempt  DNS  MDNS  EIS

DNS with conditions

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

## **BACKGROUND INFORMATION**

Site Location: The site is located at the southeast corner of E Prospect Street and McGilvra BLVD E. adjacent to Lake Washington.

Zoning: Single Family 9600

Shoreline Environment: Urban Residential and Conservancy Recreation.

Environmental Critical Areas: The property is mapped; steep slope, potential slide area, known slide area, wetlands and shoreline habitat buffer. Work will be located within the 100 foot shoreline buffer and must meet the City's Environmentally Critical Areas Ordinance. No work will be located within the steep slope, potential and known slide areas or wetlands on site.

Parcel Size: 351,093 square feet

Existing Use: Private Club (existing nonconforming use)

Public Comment: The public comment period began May 5, 2011 and ended on June 6, 2011. No comments were received.

The Proposal: The project area is approximately 30,000 square feet and is located on the northeastern portion of the Seattle Tennis Club adjacent to the Lake Washington. The project will replace approximately 250 linear feet of bulkhead; remove an existing sand volleyball court; construct a new pickleball court; replace an existing hitting wall (tennis practice); reconfigure and regrade the existing lawn area; and, provide new and reconfigured planting areas. All work will occur within 200 feet of the shoreline and within 100 feet of the Shoreline Habitat.

## **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 (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 (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 in the order they are listed in the Shoreline Master Program. The shoreline designations for the area of work are Urban Residential and Conservancy Recreation (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. Relevant Goals and Policies of the Comprehensive Plan state:

- LUG43 Protect those areas of shoreline that are geologically dangerous or fragile, or biologically fragile.
- LU246 Protect natural environment through use and development standards governing shoreline activities including best management practices.

The purpose and locational criteria of the CR environment is stated in SMC 23.60.220.C.3. The purpose states:

- The purpose of the CR shoreline environment is to protect areas for environmentally related purposes, such as public and private parks, aquaculture areas, residential piers, underwater recreational sites, fishing grounds, and migratory fish routes. While the natural environment is not maintained in a pure state, the activities to be carried on provided minimal adverse impact. The intent of the CR environment is to use natural ecological system for production of food, for recreation, and to provide access by the public for recreational use of the shorelines. Maximum effort to preserve, enhance or restore the existing natural ecological, biological or hydrological conditions shall be made in designing, development, operating and maintaining recreational facilities.

The locational criteria states:

- Dry or submerged lands generally owned by a public agency and developed as a park, where the shoreline possess biological, geological or other natural resources than can be maintained by limiting development.
- Residentially zoned submerged lands in private or public ownership located adjacent to dry lands designated Urban Residential where the shoreline possess biological, geological or other natural resources than can be maintained by limiting development.

The purpose and locational criteria of the UR environment is stated in SMC 23.60.220.C.6. The purpose states:

- The purpose of the UR shoreline environment is to protect residential areas.

The locational criteria states:

- Areas where the underlying zoning is Single-family or Multifamily residential;
- Areas where the predominant development is Single-family or Multifamily residential;

- Areas where steep slopes, shallow water, poor wave protection, poor vehicular access or limited water access make water-dependent uses impractical;
- Areas with sufficient dry land lot area to allow for residential development totally on dry land.

The proposal is to upgrade and improve the recreational area along the shoreline. Improvements will include the replacement of a portion of the existing bulkhead. Submitted plans include a proposed construction sequence for replacement of the bulkhead; submerged debris removal notes; and Best Management Practices.

#### 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.

#### 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.

#### SMC 23.60.390- Development Standards for CR Environment

The development standards set forth in the Conservancy Recreation Shoreline Environment state all developments shall be located and designed to minimum adverse impact to natural areas of biological or geological significance and to enhance the enjoyment by the public of those natural areas. Development in critical natural areas shall be minimized. Remaining development standards regulate height, lot coverage, view corridors and public access.

#### SMC 23.60.570- Development Standards for UR Environment

The development standards set forth in the Urban Residential Shoreline Environment regulate height, lot coverage, view corridors and public access. The project proposal has been reviewed and meets the development standards for the UR Environment.

The proposal is permitted in the Urban Residential environment. Best Management Practices will be employed during staging and construction to protect the aquatic environment. Contingency for removal of any debris or deleterious material that does enter water has been identified in the plans. The proposal must comply with the Building Code, Drainage Code, Grading Code and Environmental Critical Areas Ordinance. No conditional use or variance is required. The proposal meets the development standards of the UR environment. Therefore the proposal meets the general development standards, specific development standards set forth in Subchapter III, development standards of the shoreline environment and any applicable development standards of the underlying zone.

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 environment 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.

**DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT**

The Shoreline Substantial Development permit, as detailed in plans submitted to DPD dated April 18, 2011 and August 15, 2011, is **GRANTED**.

**ANALYSIS - SEPA**

Disclosure of the potential impacts from this project was made in the Environmental Checklist dated April 19, 2011 and the application for Shoreline Substantial Development Permit. These documents, including submitted plans 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 following temporary or construction-related impacts are expected: temporary increase in noise levels, increased levels of fugitive dust and fumes from the construction equipment, increased truck trip traffic, increased erosion due to grading, and impact to potential archaeologically significant site. Due to the temporary nature and limited scope of some of these impacts, they are not considered significant and no mitigation is required (SMC 25.05.794). Several adopted codes and/or ordinances provide mitigation for the identified impacts. Specifically these are: the Seattle Noise Ordinance; State Air Quality Codes administered by the Puget Sound Air Pollution Control Agency; Grading Code, Stormwater Code, Building Code and Environmental Critical Areas Ordinance. However to mitigate impacts to a potential archaeologically significant site the proposal will be conditioned to require DPD and the State Department of Archaeology and Historic Preservation to be notified if resources of potential archaeological significance are encountered during excavation or construction so that appropriate evaluation and consultation and mitigation can take place before site work resumes.

Long Term Impacts

No Long-term or use related impacts are anticipated from the proposal.

**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.

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

**CONDITIONS –SEPA**

Prior to Issuance of the Building Permit

1. Place note on Construction Plans that states: “If resources of potential archaeological significance are encountered during construction or excavation, the responsible project manager/director shall stop work immediately and notify the Department of Planning and

Development and the State Department of Archaeology and Historic Preservation so that appropriate evaluation and consultation and mitigation can take place before construction resumes.”

*For the Life of the Project*

2. If resources of potential archaeological significance are encountered during construction or excavation, the responsible project manager/director shall stop work immediately and notify the Department of Planning and Development and the State Department of Archaeology and Historic Preservation so that appropriate evaluation and consultation and mitigation can take place before construction resumes.

Signature: (Signature on File)  
Stephanie Haines, Senior Land Use Planner  
Department of Planning and Development

Date: October 17, 2011