



City of Seattle

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: 3011916
Applicant Name: Bill Granger
Address of Proposal: 1499 SW Spokane St.

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow 1.07 acres of shoreline habitat restoration in an environmentally critical area. Project also includes 6,630 cubic yards of grading.

The following approvals are required:

Shoreline Substantial Development Permit pursuant to Seattle Municipal Code.
(SMC) 23.60

SEPA – Environmental Determination pursuant to SMC 25.05.

SEPA DETERMINATION: Exempt DNS EIS
 DNS with conditions
 DNS involving non-exempt grading or demolition or
involving another agency with jurisdiction¹.

BACKGROUND DATA

Site and Vicinity

The site is located on the west side of the West Waterway under and adjacent to the Spokane Street Bridge at approximately Duwamish River mile 0.5. The site is located in an Urban Industrial (UI) Shoreline Environment. The property is owned by the City of Seattle Department of Transportation and is largely used as a utilities thoroughfare. Underground site utilities include both active and abandoned water, sewer and telecommunication lines as well as overhead electrical transmission lines that are supported by a tower located on the site. There are two utility vaults consisting of above-ground pads and rails. There is some parking and driveway area underneath the Spokane Street Bridge.

Background and Proposal

The proposal is to enhance shoreline and aquatic habitat on a 1.96 acre parcel, consistent with the Lower Duwamish River Integrated Habitat Restoration plan. The proposed project would consist of an off-channel mudflat with a channel bordered by high marsh with a densely vegetated buffer. In addition to habitat work in areas that are currently upland, shoreline improvements would occur along approximately 220 feet of existing riprap shoreline. These improvements would include creating a gentler shoreline slope, increasing aquatic habitat area, seeding high marsh vegetation (above +10 ft MLLW) and improving substrate through the placement of sandy gravel and/or fish mix (small, washed round rock gravel with sand) over armor rock down to -4 ft MLLW. In total, the project would result in approximately 0.54 acre of new or improved aquatic habitat and 0.53 acre of improved upland vegetation. Construction activities will include removal of existing rubble and debris from the shoreline and excavation of upland soils to provide new intertidal area and channel. More details of the construction methods and habitat improvements are contained in the application material.

Public Notice and Comment Period

Notice of the application was published on June 6, 2012. The required public comment period ended on July 6, 2012. No public comments were received.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

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 the 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 effects to public health, the land use and its vegetation and wild life, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline shall be designed and conducted in a manner to minimize, insofar as possible, 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 local 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 REGULATIONS OF CHAPTER 23.60

The regulations of SMC, Section 23.60.064 require that the proposed use(s): (1) conform to all applicable development standards of both the shoreline environment and underlying zoning; (2) be permitted in the shoreline environment and the underlying zoning district and (3) satisfy the criteria of shoreline variance, conditional use, and special use permits as may be required.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies that are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational 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 proposed development action will occur within an Urban Industrial (UI) shoreline environment and over water. The purpose of the UI Environment is to provide efficient use of industrial shorelines for water-dependent and water-related industrial uses. The project site is on public land and generally not suitable for industrial development due to the high number of utilities and transportation infrastructure within, above, and adjacent to the site.

The project is consistent with the Lower Duwamish River Integrated Habitat Restoration as described in the draft Restoration Plan and Programmatic Environmental Impact Statement (RP/PEIS). This document describes how the Lower Duwamish River Natural Resource Trustees will evaluate projects proposed for restoring natural resources injured by hazardous substance releases in the Lower Duwamish River.

The Trustees involved in the development of the RP/PEIS include the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA); U.S. Department of the Interior, Fish and Wildlife Service (FWS); Washington State Department of Ecology; Washington State Department of Fish and Wildlife; Suquamish Tribe and Muckleshoot Indian Tribe.

The proposed action will result in 1.07 acres of restored habitat with new off-channel mudflat and high marsh components and restored uplands. The project design has been reviewed and approved by the Lower Duwamish River Natural Resource Trustees and is consistent with the Trustees habitat restoration objectives for this area of the Duwamish River.

Development Standards

The proposal is permitted outright in SMC 23.60.840 governing the UI shoreline environment and is therefore subject to:

1. *the general development standards for all shoreline environments (SMC 23.60.152);*
2. *the development standards for uses in the UI environment (SMC 23.60.870); as well as*
3. *the development standards for General Industrial zones (SMC 23.50).*

1. General Development Standards for all Shoreline Environments (SMC 23.60.152)

All uses and developments shall be subject to the following general development standards:

- A. *The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best Management Practices such as 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.*
- B. *Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.*
- C. *Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, vessel repair facilities, marine service stations and any use regularly servicing vessels.*
- D. *The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.*
- E. *All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catch basins or settling ponds, interceptor drains and planted buffers.*
- F. *All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.*
- G. *All shoreline developments and uses shall control erosion during project construction and operation.*

- H. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.*
- I. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.*
- J. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.*
- K. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.*
- L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.*
- M. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.*
- N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.*
- O. Navigation channels shall be kept free of hazardous or obstructing development or uses.*
- P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corps of Engineers.*

The Stormwater Code (SMC 22.800) places considerable emphasis on protecting water quality. This generally takes the form of best management practices being required on building permits. The applicant has provided best management practices on plans and in the application material submitted. These measures will be adequate to ensure protection of the shoreline from the construction that is proposed, and will be required to be implemented during construction as a condition of approval.

In the long term, the project will create an off-channel mudflat with a channel bordered by high marsh with a densely vegetated buffer that will improve habitat conditions for a variety of upland and aquatic species utilizing this area and provide substantial improvement to the migratory, rearing and refuge habitat available to migrating juvenile salmonids in this area of the Lower Duwamish River and is therefore consistent with the general development standards listed above with respect to protection of shoreline habitat conditions. In total, the project would result in approximately 0.54 acre of new or improved aquatic habitat and 0.53 acre of improved upland vegetation.

2. Use and Development Standards for UI Shoreline Environments (SMC 23.60.870)

The development standards set forth in the Urban Industrial (UI) Shoreline Environment relate to critical habitat protection, height, lot coverage, view corridors, setbacks, water-related uses on waterfront lots and public access. The proposal conforms to all applicable development standards for the UI environment. The proposal is consistent with a shoreline recreation use, which is an allowed use in the Urban Industrial environment.

3. Development Standards for Industrial Zone Uses (SMC 23.50)

The project proposal also conforms with applicable development standards of the underlying General Industrial 1 (IG1) 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). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of the SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

Summary

Development requiring a Shoreline Substantial Development Permit can only be approved if it conforms to the policies and procedures of the WAC and RCW and with the regulations of Chapter 23.60 of the Seattle Shoreline Master Program.

The project as proposed meets the specific standards for development in the UI environment. It also conforms to the general development standards, as well as the requirements of the underlying zone.

The Director's authority under Seattle's Shoreline Master Program is to ensure that development proposals are consistent those policies and procedures, and conforms to specific development standards of the underlying zones. Having established that the proposal is consistent with the Seattle Shoreline Program, it is hereby conditionally approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED.**

SEPA ANALYSIS

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

The SEPA Overview Policy (SMC 25.05.554D) 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 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-term Impacts

The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in water turbidity levels, increased levels of fugitive dust and fumes from the construction equipment, disturbance of shorelines and displacement of some fish wildlife species due to increased water turbidity levels and increased noise from the construction activities. 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 the waters of the Duwamish Waterway and in the nearshore environment. With the proposed work taking place in and near water, there exists the potential for debris and other deleterious material to enter the water during this proposed work. Best management practices (BMPs) should be employed to decrease the probability of debris or other deleterious material from entering the water during the proposed work. A floating silt curtain should be deployed around the construction area to contain the turbid water and any debris that enters the water during construction. At a minimum the floating debris that enters the water during construction should be collected once per day. This material should be contained on site and then disposed of at the appropriate upland facility.

The applicant has proposed appropriate construction BMPs as shown on the plans and provided in more detail in the application material.

No further SEPA conditioning of potential short-term impacts is warranted.

Greenhouse Gas

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery; and the movement of vehicles — 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 not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from this project.

Long-term Impacts

The project will result in a substantial improvement to the quality and quantity of aquatic and nearshore habitat in this area of the Lower Duwamish River. The project application includes a maintenance and monitoring plan to ensure the implementation and management of the habitat improvements proposed in this project. This monitoring plan shall be implemented as a condition of the shoreline substantial development permit project and the monitoring results provided to other permitting agencies shall be provided to DPD upon request.

No further conditioning pursuant to SEPA policies 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.

[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).

CONDITIONS – SEPA

None.

CONDITIONS - SHORELINE

During Construction

1. The Applicant/Agent at this site shall be required to read, sign, and follow the Best Management Practices plan that has been developed for this project. The BMP plan shall follow all applicable BMPs required by Washington Department of Ecology for protection of water quality and activities near and over water.

For the Life of the Project

2. The proposed maintenance and monitoring plan, as approved by the Natural Resource Trustees, shall be implemented that ensures establishment and long-term maintenance and survival of proposed plantings, including contingency for replacement of dead plants over time. This plan should include language that prohibits use of chemical fertilizers, pesticides or herbicides within 50 feet of OHW or provides specific rationale for need and BMPs for these applications. All monitoring results reports generated for other permitting agencies for this project shall be made available to DPD upon request.

Signature: (signature on file) Date: October 22, 2012
Ben Perkowski, Senior Land Use Planner
Department of Planning and Development