



## City of Seattle

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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:** 3011995  
**Applicant Name:** Joe Brogan  
**Address of Proposal:** 205 NE Northlake Way

#### **SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Permit to relocate an existing 3,762 square foot boatshed from 1341 N. Northlake Way to 205 NE Northlake Way in an environmentally critical area.

The following approvals are required:

**Shoreline Substantial Development Permit** – (SMC Chapter 23.60)

**SEPA - Environmental Determination** - (SMC Chapter 25.05)

**SEPA DETERMINATION:**  Exempt  DNS  EIS

DNS with conditions

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

#### **BACKGROUND DATA**

##### Site Area and Vicinity Development

The subject site is located on a waterfront parcel on Lake Union at 205 NE Northlake Way. The site is zoned Industrial Buffer (IB U/45) and is within an Urban Maritime (UM) shoreline environment. The site is developed with commercial moorage and vessel repair.

Proposal

The proposal is for the relocation and continued use of a 3,762 square-foot floating boat shed that serves as a vessel repair facility for Shilshole Yachts. The structure will be moored to an existing commercial dock.

No new construction is proposed for this project.

Public Comment

No public comments were received during the public comment period that ended on May 20, 2011.

**ANALYSIS – ENVIRONMENTALLY CRITICAL AREAS**

The Environmentally Critical Areas Ordinance was adopted to promote safe, stable, and compatible development that avoids adverse environmental impacts and potential harm on the parcel and to adjacent properties.

The proposed activities include development over water within the shoreline habitat environmentally critical area, pursuant to SMC 25.09.020. The activities are allowed by Seattle's shoreline regulations, as analyzed below; and therefore are consistent with allowed development in the ECA shoreline habitat pursuant to SMC 25.09.200, as long as sufficient habitat mitigation is provided pursuant to SMC 25.09.200 (B) (3).

The project proponent has agreed to a mitigation plan that includes the removal of 2,100 square feet of man-made submerged debris from Lake Union at the subject site (205 NE Northlake Way) that occurred on December 12, 2011 and has been documented in a memo to DPD dated March 16, 2012. In addition, the applicant has agreed (in mitigation proposal to DPD dated Oct. 2012) to conduct further mitigation actions to remove an additional 1,350 square feet of man-made submerged debris from nearshore locations in the Lake Washington Ship Canal and/or Lake Union area to mitigate for the aquatic and shoreline habitat impacts of the overwater coverage resulting from the placement of this structure at this location. Submerged debris in the nearshore environment of Lake Union and the Ship Canal is known to provide habitat for predators of migrating salmon in this area. Once completed, these actions will adequately mitigate for the project's impacts, pursuant to mitigation requirements for new overwater coverage (SMC 25.09.200 (B) (3)).

**ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

Substantial Development Permit Required

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 over water and is located within an Urban Maritime (UM) shoreline environment. The purpose of the UM Environment is 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. The code allows marine retail sales and services uses, including the proposed minor vessel repair, as a principal use on a waterfront lot within the Urban Maritime (UM) Shoreline Environment (SMC 23.60.720).

### Development Standards

Marine retail sales and services must meet the development standards for the UM Environment (SMC 23.60.720), as well as the general development standards for all shoreline environments (SMC 23.60.152). Additionally, the proposed project must also meet the development standards of the underlying Industrial Buffer (IB U/45) zone (SMC 23.50). The Director may attach to the permit or authorize any conditions necessary to carry out the spirit and purpose of, and ensure the compliance with, the Seattle Shoreline Master Program (SMC 23.60.064).

The proposed action is therefore subject to the following general and specific shoreline development standards:

#### General Development Standards for all Shoreline Environments (SMC 23.60.152)

These general standards apply to all uses in the shoreline environments. They require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with best management practices for the specific use or activity. All shoreline development and uses must, in part: (1) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected; (2) be located, designed, constructed, and managed in a manner that minimizes adverse impact to surrounding land and water uses and is compatible with the affected area; and (3) be located, constructed, and operated so as not to be a hazard to public health and safety.

The floating boat repair structure, as conditioned and mitigated, is consistent with the general standards for development within the shoreline area. General development standards (SSMP 23.60.152) state that Best Management Practices shall be followed for any development in the shoreline environment. These measures are required to prevent contamination of land and water. The Stormwater Code (SMC 22.800-808) and the Grade Code (SMC 22.170) place considerable emphasis on improving water quality. A condition is imposed on this permit pursuant to Shoreline and SEPA authority, to ensure that Best Management Practices are followed. To ensure conformance with the General Development Standards and the Shoreline Master Program, the proponent will be required to notify contractors and subcontractors of the conditions of this permit.

The following general development standards are particularly relevant to this project and are highlighted below:

- 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.*

The location of the subject project is over the water and this area will be used for vessel repair work. Materials used for vessel repair such as paints, fiberglass, petroleum products, and other like products could adversely impact water quality, the aquatic environment, and species that use this area; particularly if these materials are not properly used, stored, and prevented from

entering the water. The project proponents have committed in their application material to implement Best Management Practices (BMPs) for the protection of the aquatic environment, including using all BMPs required by Department of Ecology for vessel repair work over and adjacent to the water. These BMPs shall be clearly posted for all employees to see and use at this facility, and employees shall be properly trained to implement all applicable BMPs for vessel repair work at this facility.

It is a condition of this approval that the proposed vessel repair use adheres to the guidelines, policies, standards, and regulations of applicable water quality management programs and regulatory agencies, including obtaining any necessary permit(s) from Ecology for the vessel repair work proposed at this facility.

*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.*

This project is proposed to occur in the aquatic and shoreline environment of the Lake Washington Ship Canal that provides habitat for Chinook salmon. The project site serves as a migration corridor as well as potentially rearing area for juvenile Chinook salmon from the Cedar River and other water bodies in Water Resource Inventory Area 8. Additionally, predators of juvenile Chinook are known to inhabit areas under overwater structures and may use these areas as cover while preying on juvenile Chinook. Overwater coverage reduces the amount and quality of natural habitat of juvenile Chinook salmon and provides habitat for predator species of juvenile Chinook.

The project proponent has agreed to a mitigation plan that includes the removal of 2,100 square feet of man-made submerged debris from Lake Union at the subject site (205 NE Northlake Way) that occurred on December 12, 2011 and has been documented in a memo to DPD dated March 16, 2012. In addition, the applicant has agreed (in mitigation proposal to DPD dated Oct. 2012) to conduct further mitigation actions to remove an additional 1,350 square feet of man-made submerged debris from nearshore locations in the Lake Washington Ship Canal and/or Lake Union area to mitigate for the aquatic and shoreline habitat impacts of the overwater coverage resulting from the placement of this structure at this location. Submerged debris in the nearshore environment of Lake Union and the Ship Canal is known to provide habitat for predators of migrating salmon in this area. Once completed, these actions will adequately mitigate for the project's impacts, pursuant to mitigation requirements for new overwater coverage.

#### Development Standards for UM Shoreline Environments (SMC 23.60.750)

The project has been reviewed and found to be consistent with all applicable development standards set forth in the Urban Maritime Shoreline Environment, including the lot coverage, view corridors and public access.

### **C. THE PROVISIONS OF CHAPTER 173-27 WAC**

Chapter 173-27 WAC sets forth permit requirements for development in shoreline environments and give the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and the RCW 90.58 incorporates the policies of the WAC by reference. These policies have been addressed in the foregoing analysis and have fulfilled the intent of WAC 173-27.

#### **Summary**

The proposed project, as conditioned, including the proposed mitigation, is consistent with the provisions set forth by 90.58 RCW, 173-27 WAC, and Chapter 23.60 SMC also known as the Seattle Shoreline Master Program (SSMP), thereby minimizing any adverse impact to the shoreline environment, to water quality, to the natural shoreline processes, and the surrounding land and water uses.

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

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this decision.

### **ANALYSIS - SEPA**

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated April 12, 2011 and the Biological Evaluation (BE) dated January 14, 2011 and updated mitigation plans dated March 2012 and Oct. 2012 and submitted to DPD in May 2013. The information in the checklist, BE, mitigation plans 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 25.05.665 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: "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 225.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

#### **Short-Term Impacts**

##### **Construction Impacts**

The structure is already constructed and in place with no further additions or modifications to this structure proposed, so there are no further construction-related or temporary impacts associated with this project.

Long-Term Impacts

Plants and Animals

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit the Lake Washington Ship Canal 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.*

This project is proposed to occur in the aquatic and shoreline environment of the Lake Washington Ship Canal that provides habitat for Chinook salmon. The project site serves as a migration corridor as well as potentially rearing area for juvenile Chinook salmon from the Cedar River and other water bodies in Water Resource Inventory Area 8. Additionally, predators of juvenile Chinook are known to inhabit areas under overwater structures and may use these areas as cover while preying on juvenile Chinook. Overwater coverage reduces the amount and quality of natural habitat of juvenile Chinook salmon and provides habitat for predator species of juvenile Chinook.

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**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. 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 with conditions. 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).

**SEPA and SHORELINE CONDITIONS**

*Prior to issuance of Shoreline Substantial Development Permit:*

1. The applicant (Shilshole Yacht LLC) shall implement the mitigation plan submitted to DPD (dated Oct. 26, 2012) and remove and dispose of properly at least 1,350 square feet of submerged debris from selected nearshore locations in the Ship Canal and Lake Union as described in the submitted mitigation plan.
2. The applicant shall submit documentation of completion of submerged debris removal to DPD as described in mitigation plan described in this decision and submitted to DPD by applicants and dated Oct. 26, 2012)

*Permanent for the Life of the Project:*

3. Each person that repairs vessels 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 vessel repair activities near and over water.
4. A spill prevention kit shall be located on site and at least 3 employees shall be properly trained in using the spill protection kit.
5. Applicant shall obtain all necessary permit(s) from Department of Ecology for proposed vessel repair work at this facility at the proposed location.

Signature: \_\_\_\_\_ (signature on file) Date: July 25, 2013  
Ben Perkowski, Senior Land Use Planner  
Department of Planning and Development

BP:bg

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