



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: 3012170
Applicant Name: Radim Blazej
Address of Proposal: 1609 Fairview Avenue E

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow the relocation of 524 sq. ft. float structure (Liberty Dock Service – KCA 265) from 2540 Westlake Ave N to an existing float moorage at 1609 Fairview Ave E.

Seattle Municipal Code (SMC) requires the following approvals:

Shoreline Substantial Development Permit: to relocate existing float structure in an Urban Maritime (UM) Shoreline Environment.

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 1609 Fairview Avenue E on the east shore of Lake Union. The property is zoned General Industrial 1 – IG1 U/45' and is located in the Urban Maritime (UM) shoreline environment. Entirely submerged, the property consists of two existing commercial moorage docks and one floating structure. Existing docks have pedestrian access connection to the adjacent right-of-way, Fairview Ave E. The property located to the north and west of the

subject lot is permitted as a commercial vessel repair facility. Waterway number 8 exists directly to the south and office buildings exist to the east across Fairview Ave E.

The Proposal

The applicant proposes to relocate an existing float structure (Liberty Dock Service – KCA 265) from 2540 Westlake Ave N to existing commercial moorage at 1609 Fairview Ave E. The existing float is 915 sq. ft. and will be moored on the northern most dock existing on site. The proposed float will be utilized as a workshop and office for the proposed marine sales and service use, minor vessel repair.

As the fair market value of the structures exceeds \$6,416.00, 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 May 24, 2012 and the public comment period ended on June 22, 2012. Comments/questions from the Muckleshoot Tribe regarding the relocation of the float structure, proposed use of the structure, and any structure replacing the relocated structure at 2540 Westlake Ave N were received June 19, 2011. The applicant responded directly to the questions. No further comments or questions were provided.

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 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 floating structure KCA-265 “Little Blue” will be utilized as a workshop and office for marine sales and vessel services including minor vessel repair and accessory moorage for response/workboat NEVR DULL, provided by Liberty Dock Service. Marine environmental services will also be provided including spill and response kit storage. Marine sales and services, except sale and rental of small boats, boat parts and accessories are allowed outright the Urban Maritime Environment (SMC 23.60.720).

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 relocating an existing structure from one Lake Union location (2540 Westlake Avenue N) to the proposed location (1609 Fairview Avenue E). There will be no increase in overwater coverage. No in-water or over-water construction or structural alterations are necessary to perform this action. The relocated floating structure will be moored at an existing dock along the north section of the site. 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 workshop and office to support marine retail sales and service use, Liberty Dock Service. This implementation of the float relocation and future use of the floating structure 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 proposed project 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 35 feet; the tallest structure on the floats is less than 11 feet in height.

SMC 23.60.754.A.1 limits coverage of the submerged portion of the lot to 65 percent when the waterfront lot has a lot depth of less than 50 feet of dry land. According to figures given on plan sheet A-1.01, 2,750 square feet of 13,556 (20 %) of submerged land would be covered after relocation of the float structure.

SMC 23.60.754.A.2 limits coverage by structures of the dry-land portion of the lot to 75 percent. The lot is entirely submerged and no dry land coverage 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 A-1.01, a view corridor of 30 feet must be maintained to meet this standard. This view corridor will be maintained at the center of the parcel, 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 is 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 May 14, 2012. 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 relocating an existing float structure from one location on Lake Union 2540 Westlake Avenue to proposed location at 1609 Fairview Ave E. 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 floats are relocated, there will be no net increase in over-water coverage from the existing condition. Use activities on the floats are related to providing marine sales and service use for minor vessel repair. 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.

- [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 – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

For the Life of the Project

1. All activities at this facility, particularly any work related to or involving vessel repair, shall follow all applicable Best Management Practices required by Washington Department of Ecology for protection of water quality and activities near and over water.
2. Any debris or deleterious material that falls into the water at this facility shall be retrieved immediately and disposed of at an appropriate upland facility.
3. If toxic material such as any petroleum product enters the water, this material shall be reported to the Department of Ecology, and shall be immediately contained using the appropriate equipment and material.

Signature: _____ (signature on file) Date: November 1, 2012
Lindsay King, Senior Land Use Planner
Department of Planning and Development

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