



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: 3012383
Applicant Name: Evan Wehr
Address of Proposal: 2925 Fairview Ave E

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow a 222 square foot expansion and repair of an existing marina pier walkway (Thunderbird Marina). Project includes repair of 26 pier piles, removal of 14 existing pier and mooring piles, replacement of five existing batter piles, repair of one batter pile, and installation of two new batter piles.

The scope of the project has been slightly modified since the notice of application for this project was released on June 16th, 2011. The original project description in the notice of application issued read:

Shoreline Substantial Development Application to allow a 221 sq. ft. expansion and repair of existing marina pier walkway, (Thunderbird Marina). Project includes replacing six mooring piles and removing 55 pier piles to be replaced with 32 pier piles.

Seattle Municipal Code (SMC) requires the following approvals:

Shoreline Substantial Development Permit: to allow a 222 square foot expansion and repair of existing marina pier walkway (Thunderbird Marina) in an Urban Stable (US) Shoreline Environment (Section 23.60.020 Seattle Municipal Code). Project includes repair of 26 pier piles, removal of 14 existing pier and mooring piles, replacement of five existing batter piles, repair of one batter pile, and installation of two new batter piles.

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 2925 Fairview Ave E on the south shore of the Lake Washington Ship Canal. The property is zoned Commercial2-40 (C2-40). The submerged and dry-land portions of this site are located in the Urban Stable (US) shoreline environment. The property is developed with a small marina providing covered and uncovered moorage. The adjacent property to the northeast is another private marina. To the southwest is property owned by the Seattle Parks Department.

The Proposal

The applicant proposes to replace the decking on one of the marina piers with open-grating decking, repair 26 existing pier piles, remove 14 existing pier and mooring piles, replace five existing batter piles, repair of one batter pile, and install two new batter piles. The new decking will increase the width of one segment of the pier from 5' to 5' 10.75", expanding the pier coverage by 222 square feet. Use of open grating for the 2,845 square feet of replacement decking and removal of 241 existing skirting is provided as mitigation for the expansion.

Since this proposal goes beyond an in kind repair or maintenance activity, it 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 June 16th, 2011 and ended July 15th, 2011. Staff of the Muckleshoot Indian Tribe requested copies of the plans but did not submit any comments.

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 Stable (US).

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 US environments, as stated in SMC 23.60.220.C.7, is to:

- (1) Provide opportunities for substantial numbers of people to enjoy the shorelines by encouraging water-dependent recreational uses and by permitting nonwater dependent commercial uses if they provide substantial public access and other public benefits,
- (2) Preserve and enhance views of the water from adjacent streets and upland residential areas,
- (3) Support water-dependent uses by providing services such as marine-related retail and moorage.

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 23.60.064.C. 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

The 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 existing marina provides private covered and uncovered moorage on Lake Union. The project will repair and replace worn piles and decking on an existing pier, resulting in a slightly wider deck and an increase in coverage of 222 square feet. However, use of grated decking to replace the existing solid decking and removal of skirting on this pier is expected to improve light transmission through the pier to the water. The change from existing solid decking to grated decking is expected to mitigate potential negative ecological impacts of the increased overwater coverage and reduce the overall impact of the pier.

Development standards for the US Environment

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

SMC 23.60.632.A provides a standard height limit of 30 feet; the proposal only involves refurbishment of a pier with a height of approximately 1'10" above the ordinary high water mark.

SMC 23.60.634.A.1 limits coverage of the submerged portion of the lot to 50 percent. According to figures given on plan sheet A1, 22,399 of 65,418 square feet (34.2 %) of submerged land would be covered after refurbishment of the pier.

SMC 23.60.634.A 2 limits coverage by structures of the dry-land portion of the lot to 50 percent. According to figures given on plan sheet A1, 2,874 or 19,449 square feet (14.7 %) of available dry-land is covered by existing structures. No increase is proposed.

SMC 23.60.636.A requires a view corridor in the US Environment of not less than 35 percent of the width of the lot be provided and maintained on all waterfront lots occupied by a water-dependent or water-related use. As this project only involves refurbishment of an existing pier approximately 1'10" above the ordinary high water mark, there will be no impacts on view corridors.

SMC 23.60.638 stipulates that certain developments in the US Environment are required to provide public access. However, based on criteria under SMC 23.60.200.E.3, provision of public access is not required for this marina.

No conditional use or variance required for this proposal, since the use of moorage is allowed in the US 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 June 6th, 2011. The application for the Shoreline Substantial Development Permit 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 replacing the decking on one of the marina piers with open-grating decking, repairing 26 existing pier piles, removing 14 existing pier and mooring piles, replacing five existing batter piles, repairing of one batter pile, and installing two new batter piles. The following temporary or construction-related impacts are expected: temporary increase in noise levels and temporary minor disturbance to the shorelines and displacement of some fish and wildlife species due to increased noise and wake from the movement of construction vessels and the construction work itself. 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 the identified impacts. The Seattle Noise Ordinance (construction noise) regulates noise levels and the State Air Quality Codes administered by the Puget Sound Clean Air Agency (air quality) regulates emissions. Federal and State regulations and permitting authority (Section 10 Permit and 404 Permits from the Army Corps, and HPA permit from Washington Department of Fish and Wildlife) provide effective control of short-term impacts on water quality and wildlife habitat. 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.

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 pier refurbishment is completed, there will be an increase in light transmission to the lake through the use of open grating for the decking, which is expected to reduce the negative effects of the existing and expanded overwater coverage. 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.

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

Date: October 13, 2011