



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

Project Number: 3012613
Applicant Name: Charles Warsinske
Address of Proposal: 3601 NE 41st St

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow 39,319 sq. ft. of vegetation and wetland restoration in an environmentally critical area for trail, boardwalk and viewing platforms in an environmentally critical area (Yesler Swamp Trail). Wetland mitigation plan has been submitted.

Seattle Municipal Code (SMC) requires the following approvals:

Shoreline Substantial Development Permit: to allow trail improvements and vegetation restoration in a Conservancy Recreation, Conservancy Preservation and Urban Residential 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 proposal is in Yesler Swamp located at the southwest corner of NE 41st St and Surber Dr NE. It is adjacent to and east of the Center for Urban Horticulture on the University of Washington Campus at 3501 NE 41st St.

Zoning: LR 1; MIO-37, LR 1 CF292350

Shoreline Environment: Urban Residential, Conservancy Recreation, and Conservancy Preservation

Environmental Critical Areas: The property contains a steep slope, fish and wildlife habitat conservation areas, and wetlands.

Parcel Size: 476 acres

Existing Use: School-Public (University of Washington)

Public Comment: The public comment period began March 15, 2012, and ended April 30, 2012. One comment in support of the project was received.

The Proposal: The purpose of the project is to construct an all-weather, durable, environmentally friendly walkway through Yesler Swamp that will provide public viewing, open space, education and restoration access and preserves and enhances the natural shoreline and wetland resources. The trail will include approximately 1,330 linear feet of boardwalk supported on a pin pile system, and 400 linear feet of a crushed rock surface trail. In addition, nine raised platforms ranging from 40 to 100 square feet in size will be placed along the trail and boardwalk as observation points and to allow turn-around area for wheelchairs. All trail construction will comply with Americans with Disabilities Act regulations and standards.

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 Conservancy Preservation, Conservancy Recreation, and Urban Residential (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. The purpose of the CP, CR, and UR environments are stated in SMC 23.60.220.C.2, C.3, and C6, respectively:

- The purpose of the CP Environment is to preserve, protect, restore, or enhance certain areas which are particularly biologically or geologically fragile and to encourage the enjoyment of those areas by the public.

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

The proposal is to upgrade and extend an existing trail system in a largely undeveloped area along the shoreline. Improvements will include the installation of 1,330 linear feet of raised boardwalk supported on a pin pile system and 400 linear feet of a crushed rock surface trail. In conjunction with the trail construction, 38,331 square feet of wetland and upland habitat within the Shoreline District will be enhanced by controlling invasive plant species and addition of native vegetation.

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:

CP Environment: Pedestrian paths and viewpoints are permitted as a special use in the CP Environment as a special use. Per SMC 23.60.032, the Director may approve or conditionally approve a special use only if the applicant can demonstrate all of the following:

- A. That the proposed use will be consistent with the policies of RCW 90.58.020 and the Shoreline Policies;

In accordance with RCW 90.58.020, the proposed project recognizes and protects the statewide interest of the shoreline and preserves and protects the natural character, resources and ecology of the shoreline. This will be accomplished by the utilization of raised boardwalks on which visitors can traverse Yesler Swamp without eroding or compacting sensitive soils and without trampling vegetation along the shoreline. The shoreline will not be reconfigured and the project is not expected to adversely impact fish and wildlife species. The project will increase public access to publicly owned lands and shorelines. A complete analysis of how the proposal conforms to each of the specific criteria of RCW 90.58.020 has been provided by the applicant in a memo dated April 25th, 2012.

- B. That the proposed use will not interfere with the normal public use of public shorelines;

The project formalizes the existing Yesler Swamp trail route with the construction of an all-weather and durable walkway designed to minimize environmental impact. This will improve and help manage access for restoration, public viewing, and open space, while protecting wetland function, wetland and shoreline habitat, steep slopes, and natural resources. This project minimizes environmental disturbance due to construction and operation, while reversing environmental damage and improving shoreline access for bird watchers, passive open-space enjoyment, restoration work parties, families with children, and those who require an accessible trail design.

- C. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area;

The proposed use of the site and design of the project is compatible with the other permitted uses in the area, which includes single family residential and institutional uses (the University of Washington Center for Urban Horticulture).

- D. That the proposed use will cause no unreasonably adverse effects to the shoreline environment in which it is to be located;

The proposed use will cause no unreasonably adverse effects to the shoreline environment. The project formalizes the existing informal Yesler Swamp trail route with the construction of an all-weather and durable walkway designed to minimize impacts to the shoreline environment. The new trail will improve access for restoration activities, public viewing, and open space, while protecting wetland function, wetland and shoreline habitat, steep slopes, and regional resources. The project design minimizes disturbance from construction and operation, and reverses environmental damage from the current informal use of the site for bird watching and walking. The construction of the trail will coincide with 38,331 square feet of wetland and upland habitat enhancement.

- E. That the public interest suffers no substantial detrimental effect.

The public interest suffers no substantial detrimental effect due to this project. The proposed project recognizes and protects the statewide interest of the shoreline and preserves and protects the natural character and ecology of the shoreline. The shoreline will not be reconfigured and the project is not expected to impact fish and wildlife species. The development has been located to minimize and reduce adverse impacts, while enhancing the public's enjoyment of the natural environments protected by the Conservancy Preservation Designation.

CR Environment: Shoreline recreation uses, excluding auto-trailer boat launching ramps, are allowed outright in the CR Environment.

UR Environment: Shoreline recreation uses are allowed outright in the UR Environment.

Zoning: The proposal meets all zoning requirements in the underlying zoning.

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:

The conformance of the project with the general development standards and development standards in the shoreline environments in which the project is located is discussed below.

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.

Conformance with the special use criteria for development in the CP Environment is provided above.

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.

The proposal, as designed and conditioned below including the proposed mitigation, would not adversely affect the quality and quantity of surface and ground water on and adjacent to the site on a long-term basis. No planned discharge of solid wastes would occur. Spillage of petroleum or diesel products must be avoided and contained should it occur. No intentional release of oil, chemicals, or other hazardous materials shall occur. Erosion would not result from the development. Impacts to fish and wildlife and shoreline processes are minimized. Long-term impacts to surrounding land and water uses are also minimized. No vegetation will be cleared with this proposal. No hazard to public safety or health is proposed by this development. Navigation channels will not be affected. The proposal would not affect existing shoreline stabilization except that man-made debris on the beach will be removed near the existing bulkhead. No submerged public right-of-way or view corridors would be significantly affected. The conditions noted at the end of this report, which are based on the criteria of SSMP 23.60.152, ensure that the project conforms to the goals and regulations of the Seattle Shoreline Master Program. The public interest suffers no substantial detrimental effect from the proposal.

SMC 23.60.330-334 - Development Standards for CP Environment

The development standards set forth in the Conservancy Preservation Shoreline Environment state all developments shall be located and designed to minimize 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 limit height to 15 feet.

The proposal is designed to provide an ADA-compliant pedestrian trail providing access to the Yesler Swamp and the associated shoreline. This trail has been designed to avoid and minimize impacts to the wetland, wetland buffer, shoreline habitat, shoreline habitat buffer, and steep slopes within the Shoreline District. Design elements include:

- Raising the boardwalk throughout the entirety of the wetland in order to minimize impacts to wetland vegetation and hydrology.
- Using a pin-pile support system for the boardwalk to minimize ground disturbance in the wetland.
- Placing all bulkheads at the surface trail/raised boardwalk junctions outside of wetlands.
- Minimizing the width of the trail.
- Realigning the new trail on upland hummocks within the wetland, where appropriate.
- Realigning the boardwalk to stay outside the drip line of adjacent trees.
- Realigning the at-grade trails at the parking access location to avoid interfering with water flowing into the wetland from the western slope.
- Moving the eastern trail alignment westward in order to stay at least 15 feet away from the base of steep slopes.

In addition, 38,331 square feet of wetland and upland enhancement will be conducted in the Shoreline District through control of invasive weeds and addition of native vegetation. No structures are proposed that would exceed 15 feet in height.

SMC 23.60.390-400 - 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.

As provided above, the proposal is designed to provide an ADA-compliant pedestrian trail providing access to the Yesler Swamp and the associated shoreline and has been designed to avoid and minimize impacts to the wetland, wetland buffer, shoreline habitat, shoreline habitat buffer, and steep slopes within the Shoreline District. The proposal meets all development standards relating to height, lot coverage, view corridors, and public access.

SMC 23.60.570-578 - 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.

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, as conditioned the proposal is approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development permit, as detailed in plans submitted to DPD dated March 7th, 2012 is **CONDITIONALLY GRANTED**.

ANALYSIS - SEPA

Disclosure of the potential impacts from this project was made in the Environmental Checklist dated March 7th, 2012, 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).

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials 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.

Several adopted codes and/or ordinances provide mitigation for the identified impacts. Specifically these are: the Seattle Noise Ordinance, Grading Code, Stormwater Code, Building Code, and Environmental Critical Areas regulations; and State Air Quality Codes administered by the Puget Sound Clean Air Agency. In order 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, 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. The 38,331 square feet of wetland and upland habitat enhancement and formalization of an existing informal trail network is expected to improve the overall ecological health within the project area.

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

Prior to construction

1. A building/grading permit must be obtained from the Seattle Department of Planning and Development prior to any land disturbing activities in the project area. All necessary state and federal permits must be obtained prior to construction.

During construction

2. All vegetation planting proposed on plan sheet S-3 of the plan set must be installed prior to the final inspection for the grading/building permit noted above.
3. All maintenance and monitoring outlined in the *Wetland Mitigation Report Yesler Swamp Trail Alignment Project*, prepared by Touchstone Ecoservices, dated March 7th, 2012, must be implemented as a condition of this approval. Monitoring reports shall be provided to DPD annually, as indicated in this report.

CONDITIONS –SEPA

Prior to Issuance of the Building/Grading Permit

4. 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

5. 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) Date: July 26, 2012
Seth Amrhein, Senior Environmental Analyst
Department of Planning and Development

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