



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: 3011318 & 3013014

Applicant Name: Al Elliot

Address of Proposal: 601 NW 40th St; 617 NW 40th St; 624 NW 40th St

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development to allow stormwater drainage consisting of 1,350 linear feet of piping and 200 linear feet of trench drains below ground. Project includes two above ground treatment facility tanks (20,000 gallons each), a 1,200 square foot storage shed and 350 cubic yards of grading. Existing structures to remain. Review includes property at 624 NW 40th (#3013014)

Seattle Municipal Code (SMC) requires the following approvals:

Shoreline Substantial Development Permit: Section 23.60.020 Seattle Municipal Code

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 on three properties on the north shore of the Lake Washington Ship Canal: 601 NW 40th St; 617 NW 40th St; and 624 NW 40th St. The properties are zoned Industrial General 2 Unlimited/65 (IG2 U/65'). The dry-land portion of this site where all the proposed work will occur is located in the Urban Industrial (UI) shoreline environment. The properties are developed with warehouse and office structures. The remainder of the properties appears nearly completely paved. The shoreline of the Lake Washington Ship Canal is a vertical bulkhead that is used for mooring and maintaining sea-going tow boats.

The Proposal

The purpose of the proposal is to meet stormwater quality discharge requirements established by NPDES Permit No. WA003219-1 by construction of a stormwater collection, conveyance, and treatment system. The project also includes construction of a storage building. Specific elements of this proposal include:

1. Cut and fill trenching for approximately 1,550 feet of piping and trench drains.
2. Installation of a stormwater lifts pump station vault, pumps, and electrical components.
3. Installation of an above ground treatment facility, including two surge tanks approximately 18 feet in diameter and 16 feet high with a new shoreline outfall above the ordinary high water mark of the Lake Washington Ship Canal. Four existing outfalls are to be abandoned and two are to be reused.
4. Paving, repaving, and over paving of the site, resulting in no increase of impervious surface.
5. Construction of an approximately 80 feet by 150 feet concrete work pad.
6. Installation of a stormwater drainpipe across NW 40th St and pedestrian walkway striping.
7. Construction of a storage building approximately 30 feet by 40 feet by 18 feet high on the upland portion of the site.

All proposed work is landward of the ordinary high water mark. Normal trenching and construction machinery and techniques will be used. A temporary erosion and sedimentation control plan will be developed and implemented, and appropriate best management practices will be followed to control erosion during all excavation and filling work.

PUBLIC COMMENT:

Public notice of the applications was published on January 10th, 2012 and ended on February 10th, 2012. No comments were received.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

The proposal is located in the Urban Industrial (UI) Shoreline Environment as designated by the Seattle Shoreline Master Program (SSMP). The Shoreline Master Program, Chapter 23.60 of the Seattle Municipal Code, regulates use and development in the City's shoreline districts to implement the policy provisions of the Shoreline Management Act of 1971 and the Shoreline Goals and Policies.

The SSMP requires that a shoreline permit be obtained prior to the undertaking of any substantial development within a shoreline environment. SMC Section 23.60.030 includes criteria for evaluating a shoreline permit. 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 upland area where the proposed work will occur is Urban Industrial (UI at 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 UM environments, as stated in SMC 23.60.220.C.9, is "...to 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 project site is used for the management and maintenance of a tug boat fleet. The tugboat company also constructs a new tugboat approximately every two years. Adjacent properties along the shoreline conduct similar activities. Tugboat services and manufacturing are allowed outright in the Urban Industrial Environment (SMC 23.60.840). The upgrades to the stormwater drainage system and construction of the concrete pad and storage building are ancillary to the existing current use on the parcels.

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 purpose of this project is to meet stormwater quality discharge requirements established the National Pollution Elimination Discharge (NPDES) Permit No WA003219-1, issued by the Washington State Department of Ecology. This permit requires construction of a stormwater collection, conveyance, and treatment system. No in-water or over-water construction or structural alterations are necessary to perform this action. This project is designed to improve the quality of stormwater discharge from the project site. Adverse effects to water quality, water quantity, or habitat on or adjacent to the site on a short or long-term basis are not expected. 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. No submerged public right-of-way or view corridors would be significantly affected. The public interest suffers no substantial detrimental effect from the proposal.

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

SMC 23.60.872.A provides a standard height limit of 35 feet; the tallest structure proposed under this proposal is 18.4 feet in height.

SMC 23.60.874.A.1 allows structures to occupy up 100 percent of both submerged and dry-land area of waterfront lots. Plan sheet 2 shows that much less than 100 percent would be occupied by structures after completion of this project.

SMC 23.60.876 does not require view corridor in the UI Environment if a water dependent use occupies more than 50 percent of the lot. The project site within the shoreline district is used for management and maintenance of a tugboat fleet, which meets the definition of a water dependent use under SMC 23.60.944. Therefore, a view corridor is not required.

SMC 23.60.878 only requires setbacks in the UI Environment for nonwater-dependent uses.

No conditional use or variance is required for this proposal, since the use is allowed in the UI 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 December 27th, 2011. 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 construction of a stormwater collection, conveyance, and treatment system and a storage building on upland. All construction is landward of the ordinary high water mark. Normal trenching and construction machinery and techniques would be used. The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in exhaust from the construction equipment, and potential erosion. 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 on upland adjacent to the waters of Lake Washington Ship Canal. 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.

Use of construction equipment 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 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 transport of construction materials. 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. The purpose of the project is to collect and treat stormwater sheet flow from the project site (tow boat maintenance area and vessel assembly area) and bring it into compliance with state and federal regulations prior to its discharge into the Lake Washington Ship Canal. Currently, this stormwater receives only basic treatment from oil/water separators in catch basins. Therefore, implementation of this project is expected to improve water quality discharges over the current conditions. No further physical alteration to 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

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. Appropriate best management practices (BMPs) shall be employed to prevent material from entering Lake Union.
2. Care shall be taken by the owner(s), builder(s), or responsible party(s) to prevent toxic materials, petrochemicals and other pollutants from entering surface water during the proposed repair work. Spill prevention and response plan and material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.

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

Date: May 14, 2012