



City of Seattle
Edward B. Murray, Mayor

Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3013437
Applicant Name: Eric Hogeboom
Address of Proposal: 1213 E Shelby Street

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow two new floating homes and floats (slips #1 and #3). Existing floating homes to be demolished.

The following approvals are required:

Shoreline Substantial Development Permit – (SMC Chapter 23.60) to allow a floating home in a UR (Urban Residential) shoreline environment.

SEPA - Environmental Determination - (SMC 25.05)

SEPA DETERMINATION: Exempt DNS MDNS EIS
 DNS with conditions
 DNS involving non-exempt grading, or demolition,
or involving another agency with jurisdiction.

BACKGROUND DATA

Subject Site and Vicinity

The subject property is zoned Single Family (SF-5000). The parcel contains two separate parts separated by a submerged right-of-way, Fuhrman Avenue E. The parcel and right-of-way are located on the east side of Lake Union and are mostly submerged. One portion of the parcel on the east side of the submerged right-of-way is located on dry land. The shoreline environment designation for the lot is Urban Residential (UR). Currently, 19 floating homes are situated

wholly or partly on this parcel. The parcel is divided into separate condominium ownership so that each floating home is independently owned. The two floating homes proposed for replacement are secured in slip “1” and “3” of a shared mooring dock that connects to the right-of-way intersection of E Shelby Street and a 15 foot alley. Each surrounding lot is zoned Single Family (SF5000). Parcels to the west contain single family homes. Parcels to the south contain existing floating home moorages. A private marina for pleasure boats is located to the north and the open water of Lake Union is to the west.

Proposal Description

The project proposal is for the replacement of two existing Lake Union floating homes. Each replacement floating home will have two levels: the first floor level contains one bedroom, a second bedroom or a den and one bathroom. The second floor functions as the primary living space with kitchen, living room and one or two outdoor decks. Neither of the floating homes will provide a rooftop deck. The home will float above a concrete pontoon float that will extend to four feet below the water’s surface.

The overwater coverage of each floating home, “1” and “3”, and its surrounding decking (the float) will be the same as the existing floating home floats (1,155 sq. ft. and 773 sq. ft. respectively).

A Shoreline Substantial Development Permit (SSDP) is required for all non-exempt development in the Shoreline Environment. While SMC SMC 23.60.020.C.6 exempts single family residences on shorelands from the requirement to obtain a SSDP, floating homes are not eligible for this exemption.

Public Comment

One written comment was received during the comment period, which ended on July 20, 2013. The commenter felt that the houseboat should be replaced without the need for lake bed dredging. As noted, the project proposal does not include dredging.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The proposal is located within the Urban Residential (UR) 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 and 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 the Shoreline Management Act.

A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58.RCW

The State of Washington Shoreline policies (RCW Chapter 90.58) provide for the control of pollution and prevention of damage to the natural environment, and for the protection of the resources and ecology of the shoreline over the long term. 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. The Shoreline Management Act of 1971 provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60 that also incorporates the provisions of Chapter 173.27 WAC. 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.

The City of Seattle Shoreline policies incorporate these goals by reference and include area objectives pursuant to these goals. These policies contemplate 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 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.

As discussed below, this proposal is consistent with the policies and procedures of the RCW Chapter 90.58.

B. THE REGULATIONS OF CHAPTER 23.60

The regulations of SSMP Section 23.60.064 require that the proposed use: 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) be permitted in the shoreline environment and the underlying zoning district; 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be required; and 4) SMC 23.60.014 C. for standards applicable to environmentally critical areas as provided in Seattle Municipal Code Chapter 25.09, Regulations for Environmentally Critical Areas, as applicable in the Shoreline District. If there are any conflicts between the Seattle Shoreline Master Program and Seattle Municipal Code Chapter 25.09, the most restrictive requirements shall apply.

The proposal site is located in an area designated as Urban Residential (UR), the purpose of which is to protect residential areas in a manner consistent with the Single family and Multi-family Residential Area Policies. Floating homes are an allowed use in the UR Environment. The floating home is within the Lake Union Construction limit line. The proposed replacement floating home design has been found to be in compliance with these allowances uses and structures.

Development Standards

The proposal to install a replacement floating home in the UR Environment is permitted outright in SMC 23.60.540. The proposed action is therefore subject to following development standards:

1. *The general development standards for all shoreline environments (SSMP 23.60.152);*
2. *The development standards for floating homes (SSMP 23.60.196);and*
3. *The development standards for uses in the UR environment (SSMP 23.60.570);*

General Development Standards for all Shoreline Environments (SMP 23.60.152)

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 proposal involves demolishing the existing floating homes at their current location. The existing float logs will be removed from the lake by crane and salvaged for another use. The replacement concrete floating home float will be constructed at an offsite location secured in its former place, resulting in the same or less over-water coverage. Once the float is located the new floating home will be constructed in place. All offsite movement of the floats will occur in designated travel lanes within the Lake Washington Ship Canal and Lake Union. The demolition, implementation of the floating home float swap, the future construction of the new floating homes and use of the floating home is expected to temporarily adversely affect water quality, water quantity, or habitat on or adjacent to the site on a short term basis. The applicant has provided a suite of customized Best Management Practices (BMPs) on plan sheet 2-5, which provide further assurance that that act of removing, moving and exchanging the floats, and future construction of the floating home on the floats, will be consistent with the general standards in SMC 23.60.152.

In addition to the customized BMPs and to be consistent with shoreline general development standards for protection of the aquatic environment (SMC 23.60.152), the project will be required to employ Best Management Practices during construction and installation and to control artificial light spillage into the water that can negatively impact salmonids that utilize this area by the design and placement of exterior lights. Artificial light at night in the water has been shown to increase the vulnerability of young salmonids to predation and therefore should be limited to the extent feasible through use of low-wattage light bulbs and shielding of exterior light fixtures to prevent light spillage into adjacent water.

As conditioned, this proposal is consistent with the policies of SMC 23.60.152 Shoreline Management Program and with best management practices for the specific use or activity.

Development Standards for Floating Homes (SMC 23.60.196)

This section sets forth standards for floating home moorages and the floating home structures within these moorages. The replacement floating home was reviewed under the standards for nonconforming floating home moorages (SMC 23.196.C) and conforms to these development standards.

Development Standards for UR Environment (SMC 23.60.570-578)

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). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

Thus the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

Summary

Minimal additional adverse impacts to the shoreline environment are expected, and the proposed floating home replacement will be consistent with the provisions set forth by 90.58 RCW, 173-27 WAC, and Chapter 23.60 SMC also known as the Seattle Shoreline Master Program (SMP).

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

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

ANALYSIS – SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated August 29, 2013. The information in the checklist and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SSMC 25.05.665 D) clarifies the relationship between codes, policies and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states in part: "*where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,*" subject to some limitations. Under such limitations/circumstances (SSMC 25.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-term Impacts

The proposal involves demolishing the existing floating home, removing the existing float logs by crane, securing a replacement floating home float in its former place, resulting in the same over water coverage. The replacement floating home will be constructed on site. Over-water construction is anticipated to complete the upper level structure.

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, increased dust, debris from construction of the new structures. 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 and in water construction 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 may cause 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 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 new float is installed, there will be no change in over-water coverage from the existing condition. Use activities will remain single family residential. No further physical alteration to the surrounding 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.

CONDITIONS -- SHORELINE

Prior to Issuance of a Construction Permit

1. Develop a Best Management Practices (BMP) Plan that indicates how construction will take place to ensure that no debris or deleterious material enters the water through the duration of the proposed demolition and construction.

Standard best management practices (BMPs) (such as using secondary receptacle containers when handling toxic material so that any spilled material is contained in the second receptacle rather than entering the water and using toxic material so that none of this material enters the water) shall be used to ensure that no petroleum products, other toxic substances, including household chemicals, herbicides pesticides, chemical fertilizers, miscellaneous debris and/or other deleterious materials are allowed to enter or leach into the water.

Prior to Commencement of Construction

2. Notify in writing all contractors and sub-contractors of the following general requirements of the Shoreline Master Program (SSMP 23.60.152):
 - a) The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards, and regulations of water quality management programs and regulatory agencies.
 - b) Best Management Practices shall be employed during the proposed over-water work as necessary to keep debris and deleterious material out of the water. The contractor shall include on the plans a written description of the BMPS that will be used during the proposed work.
 - c) An emergency containment plan and procedures shall be developed for all toxic material that will be kept on site. All necessary equipment for containment and clean-up of this toxic material shall be stocked on the site. A sufficient number of personnel that will be on-site during construction shall be trained in the proper implementation of this plan.
 - d) Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water.

During Construction

3. The owner(s), builder(s), or responsible party(s) shall follow the Best Management Practices and the Emergency Containment plans developed to prevent debris and other deleterious material from entering the water during construction.
4. If any debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.

5. Equipment using oil, gasoline, or diesel used on site shall be checked daily for evidence of leakage, if evidence of leakage is found, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

For Life of project

6. All exterior light fixtures shall be fully shielded to prevent light spillage beyond the perimeter of the float, and shall use low-wattage light bulbs.
7. No treated wood should be used for decking for the float. If treated wood is proposed for other structures, this wood shall be professionally treated and completely cured using the best management practices developed by the Western Wood Preservers Institute (<http://www.wwpinstitute.org/>) before this wood is used for this project.

Signature: _____ (signature on file) _____ Date: March 31, 2014
Lindsay King, Senior Land Use Planner
Department of Planning and Development

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