



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: 3013661
Applicant Name: George Blomberg for the Port of Seattle
Address of Proposal: 7797 - 8th Ave S

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow grading of 180 linear feet of material (6,900 sq. ft.) on the Duwamish Waterway shoreline for shoreline habitat restoration and 7,450 sq. ft. for pedestrian access in South Riverside Drive right-of-way (7,450 sq. ft.) in an environmentally critical area. Total grading is 475 cubic yards. Determination of Non-Significance has been prepared by the Port of Seattle.

The following approvals are required:

Shoreline Substantial Development Permit (Chapter 23.60, Seattle Municipal Code.)

SEPA – to impose conditions (Chapter 25.05, Seattle Municipal Code.)

SEPA DETERMINATION: Exempt DNS* EIS
 DNS with conditions
 DNS involving non-exempt grading or demolition or involving another agency with jurisdiction¹.

BACKGROUND DATA

Site and Vicinity

The site is located on the west shoreline of the Duwamish Waterway, near River Mile 3.2, approximately 450 linear feet east of the South Riverside Drive/South Holden Street/Seventh Ave South intersection and approximately 170 feet north of the South Portland Street/Eight Avenue South intersection. The site is located in an Urban Industrial (UI) Shoreline Environment, and the underlying zoning is Industrial General 1(IG1 U/85'). The property is owned by the Port of Seattle and includes a portion of city right-of-way (South Riverside Drive).

The project area includes about 180 linear feet of port-owned shoreline and upland area (including rights-of-way) of approximately 14,350 sq. ft.

Project Description

The proposal is a shoreline rehabilitation project which will include re-grading of the port-owned Duwamish Water margin and adjacent City-owned South Riverside Dr. right-of-way to restore intertidal and shoreline conditions and improve publicly accessible shoreline.

The project includes the removal of a derelict wooden barge and inter-tidal rubble, which will re-expose and allow rehabilitation of about 4,075 sq. ft. of existing intertidal area. Existing shoreline and upland elevations will also be reduced (from approximately plus 5 to 16 MLLW to approximately plus 11 to 13 feet MLLW, to create about 1975 sq. ft. of restored inter-tidal area which will be planted with for marsh vegetation to be anchored in place with large, woody debris. Further upland, landscaped mounds will be created using materials excavated on-site, and native riparian vegetation will be installed. Shoreline and upland vegetation will include about 8350 sq. ft. of riparian and upland trees, shrubs and groundcover.

The project will also provide public access improvements including a pedestrian pathway with two viewpoints, intended to connect South Riverside Drive right-of-way with the existing South Park-Eighth Avenue South public shoreline access site.

Public Notice and Comment Period

Notice of the application was published on August 30, 2012. The required public comment period ended on September 28, 2012. No public comments were received.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

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 the 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 effects to public health, the land use and its vegetation and wild life, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline shall be designed and conducted in a manner to minimize, insofar as possible, 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 local 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 REGULATIONS OF CHAPTER 23.60

The regulations of SMC, Section 23.60.064 require that the proposed use(s): (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 and (3) satisfy the criteria of shoreline variance, conditional use, and special use permits as may be required.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies that are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational 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 proposed development action will occur within an Urban Industrial (UI) shoreline environment and over water. The purpose of the UI Environment is to provide efficient use of industrial shorelines for water-dependent and water-related industrial uses. The project site is on existing port-owned shoreline and unimproved, City-owned upland street right-of-way of approximately 14,350 sq. ft., including 180 linear feet of shoreline. The area proposed for restoration has been used in recent years by adjacent industrial site operators under street use permit from the City of Seattle, for outdoor storage of wood and concrete construction materials, storage of empty cargo containers, and vehicle parking. The project is located on public land and within rights-of way and is generally not suitable for industrial development due to the presence of utilities and transportation infrastructure within, above, and adjacent to the site.

Development Standards

The proposal is permitted outright in SMC 23.60.840 governing the UI shoreline environment and is therefore subject to:

1. *the general development standards for all shoreline environments (SMC 23.60.152);*
2. *the development standards for uses in the UI environment (SMC 23.60.870); as well as*
3. *the development standards for General Industrial zones (SMC 23.50).*

1. General Development Standards for all Shoreline Environments (SMC 23.60.152)

All uses and developments shall be subject to the following general development standards:

- 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 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.*
- B. *Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.*
- C. *Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, vessel repair facilities, marine service stations and any use regularly servicing vessels.*
- D. *The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.*
- E. *All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catch basins or settling ponds, interceptor drains and planted buffers.*
- F. *All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.*
- G. *All shoreline developments and uses shall control erosion during project construction and operation.*
- H. *All shoreline developments and uses shall 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.

- I. All shoreline developments and uses shall 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.*
- J. All shoreline developments and uses shall 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.*
- K. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.*
- L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.*
- M. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.*
- N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.*
- O. Navigation channels shall be kept free of hazardous or obstructing development or uses.*
- P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corps of Engineers.*

The Stormwater Code (SMC 22.800) places considerable emphasis on protecting water quality. This generally takes the form of best management practices being required on building permits. The applicant has provided best management practices on plans and in the application material submitted. These measures will be adequate to ensure protection of the shoreline from the construction that is proposed, and will be required to be implemented during construction as a condition of approval.

In the long term, the project will improve habitat conditions for a variety of upland and aquatic species utilizing this area and provide substantial improvement to the migratory, rearing and refuge habitat available to migrating juvenile salmonids in this area of the Duwamish River and is therefore consistent with the general development standards listed above with respect to protection of shoreline habitat conditions.

2. *Use and Development Standards for UI Shoreline Environments (SMC 23.60.870)*

The development standards set forth in the Urban Industrial (UI) Shoreline Environment relate to critical habitat protection, height, lot coverage, view corridors, setbacks, water-related uses on waterfront lots and public access. The proposal conforms to all applicable development standards for the UI environment. The proposal is consistent with a shoreline recreation use, which is an allowed use in the Urban Industrial environment.

3. *Development Standards for Industrial Zone Uses (SMC 23.50)*

The project proposal also conforms with applicable development standards of the underlying General Industrial 1 (IG1) zone.

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 the SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

Summary

Development requiring a Shoreline Substantial Development Permit can only be approved if it conforms to the policies and procedures of the WAC and RCW and with the regulations of Chapter 23.60 of the Seattle Shoreline Master Program.

The project as proposed meets the specific standards for development in the UI environment. It also conforms to the general development standards, as well as the requirements of the underlying zone.

The Director's authority under Seattle's Shoreline Master Program is to ensure that development proposals are consistent those policies and procedures, and conforms to specific development standards of the underlying zones. Having established that the proposal is consistent with the Seattle Shoreline Program, it is hereby conditionally approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED**.

SEPA ANALYSIS

On July 24, 2012, The Port of Seattle made a Determination of Non-Significance for the proposal. Project specific environmental impacts of the improvements have been disclosed and analyzed in the documents provided by The Port of Seattle, acting as Lead Agency.

The Seattle SEPA Ordinance provides substantive authority to require mitigation of adverse environmental impacts resulting from a proposed project (SMC 25.05.655 and 25.05.660). Mitigation, when required, must be related to specific environmental impacts identified in an environmental document and may only be imposed to the extent that a given impact is attributable to a proposal, and to the extent that the mitigation is reasonable and capable of being accomplished. Additionally, mitigation may be imposed only when based on policies, plans and regulations referenced in SMC 25.05.665 to SMC 25.05.675 inclusive (SEPA Overview Policy, SEPA Cumulative Impacts Policy, SEPA Specific Environmental Policies). In some instances, local, state or federal regulatory requirements will provide sufficient mitigation of an impact and additional mitigation imposed through SEPA may not be necessary.

Short-term Impacts

The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in water turbidity levels, increased levels of fugitive dust and fumes from the construction equipment, disturbance of shorelines and displacement of some fish wildlife species due to increased water turbidity levels and increased noise from the construction activities. 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 as discussed below.

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 the waters of the Duwamish Waterway and in the nearshore environment. With the proposed work taking place in and near water, there exists the potential for debris and other deleterious material to enter the water during this proposed work. As noted in the Port's SEPA Checklist, potential adverse effects to water quality and wildlife are expected to be limited to temporary, localized turbidity increases in the Duwamish Waterway in the vicinity of excavation at the shoreline. In addition, removal of the derelict barge and rubble debris may result in temporary and limited turbidity.

Best management practices (BMPs) should be employed to decrease the probability of debris or other deleterious material from entering the water during the proposed work. A floating silt curtain should be deployed around the construction area to contain the turbid water and any debris that enters the water during construction. At a minimum the floating debris that enters the water during construction should be collected once per day. This material should be contained on site and then disposed of at the appropriate upland facility.

The applicant has proposed appropriate construction BMPs as shown on the plans and provided in more detail in the application material, including the memorandum from the Port of Seattle to Ben Perkowski dated October 5, 2012 (received October 24, 2012). Please see pages 6, 9, 10 and 13 of the SEPA Checklist and the TESC Plan submitted October 24, 2012 for additional detail.

No further SEPA conditioning of potential short-term impacts is warranted.

Greenhouse Gas

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery; and the movement of vehicles — 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 due to the relatively minor contribution of greenhouse gas emissions from this project.

Long-term Impacts

The project will result in a substantial improvement to the quality and quantity of aquatic and near-shore habitat in this area of the Duwamish Waterway. The project application includes a maintenance and monitoring plan to ensure the implementation and management of the habitat improvements proposed in this project. This monitoring plan shall be implemented as a condition of the shoreline substantial development permit project and the monitoring results provided to other permitting agencies shall be provided to DPD upon request.

No further conditioning pursuant to SEPA policies is warranted.

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).

CONDITIONS – SEPA

None.

CONDITIONS - SHORELINE

During Construction

1. The Applicant/Agent at this site shall be required to read, sign, and follow the Best Management Practices plan that has been developed for this project. The BMP plan shall follow all applicable BMPs for protection of water quality and activities near and over water.

For the Life of the Project

2. The proposed maintenance and monitoring plan shall be implemented to ensure establishment and long-term maintenance and survival of proposed plantings, including contingency for replacement of dead plants over time. This plan should include language that prohibits use of chemical fertilizers, pesticides or herbicides within 50 feet of OHW or provides specific rationale for need and BMPs for these applications. All monitoring results reports generated for other permitting agencies for this project shall be made available to DPD upon request.

Signature: (signature on file)
Molly Hurley, Senior Land Use Planner
Department of Planning and Development

Date: December 17, 2012