



**City of Seattle**  
Edward B. Murray, Mayor

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**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:** 3014584  
**Applicant Name:** Kevin Keely  
**Address of Proposal:** 1331 N Northlake Way

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Application to allow installation of two, 200 sq. ft. (4 ft. by 50 ft.) finger piers accessory to existing marina. (Affinity Marina)

The following approvals are required:

**Shoreline Substantial Development Permit:** For development in the Urban Maritime Shoreline Environment.

**SEPA - Environmental Determination - Chapter 25.05 SMC**

**SEPA DETERMINATION:**     Exempt    DNS    MDNS    EIS

DNS with conditions

DNS involving non-exempt grading or demolition or involving another agency with jurisdiction

**Background and Proposal Description**

The subject site is located at 1331 N Northlake Way on the north shore of Lake Union. The property is zoned Industrial Commercial. The dry land and submerged portion of the site is located within the Urban Maritime (UM) Shoreline Environment.

The applicant proposes to construct two floating finger piers at an existing marina (to remain). No change in use from the established marina use is proposed. The dimensions of the proposed piers are 4' by 48' and 4' by 53', including two ramps to access floats. The total proposed overwater coverage increase is 408 square feet. The floats and ramps will have grated

decking to allow natural light penetration to water below structures. In order to mitigate for the habitat impacts of the new overwater coverage, the applicant proposes to remove a section of slip cover (approximately 715.5 square feet) and grate two existing sections of pier that currently have solid decking (total of 363 square feet).

### Public Comment

The public comment period began on April 11, 2014 ended on May 30, 2014. No comments were received.

## **ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT**

The entire proposed project area is within the Shoreline District and the Urban Maritime (UM) Shoreline Environment. The Shoreline Master Program (SMP), Chapter 23.60 of the Seattle Municipal Code, regulates use and development in the City's Shoreline District in order to implement the policy and provisions of the Shoreline Management Act of 1971 and the Shoreline Goals and Policies.

The SMP requires that a shoreline permit be obtained prior to the undertaking of any substantial development within a Shoreline Environment. SMC 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**

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 policies of the Act regarding preferences for uses in the Shoreline District are articulated in RCW 90.58.020. These use preferences include the preference for development that "increase(s) recreational opportunities for the public in the shoreline."

The proposal is for two finger piers accessory to an established recreational marina use along the shoreline of Lake Union that will allow the public to enjoy boating activities in the public waters of Lake Union and beyond. This proposal is consistent with the policies of the RCW Chapter 90.58.

**B. THE REGULATIONS 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. Development standards of the shoreline environment and underlying zone must be considered as well as any conditioning that may be 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.

Each of these elements is evaluated below in the order they are listed in the Shoreline Master Program. The shoreline designation for the area of this project within the Shoreline District is the Urban Maritime (UM) Shoreline Environment.

**SMC 23.60.004 - Shoreline Policies**

The purpose of the UM Shoreline Environment as described in SMC 23.60.220.C.9 is 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. Public access shall be second in priority to water-dependent uses unless provided on street ends, parks or other public lands.

The established use is consistent with these goals.

In the City of Seattle’s Comprehensive Plan, Goal LUG 44 promotes development that provides for “the optimum amount of public access – both physical and visual – to the shorelines of Seattle.” LU258 promotes development that results in an “increase opportunity for the public to enjoy water-dependent recreation including boating, fishing, swimming, diving and enjoyment of views.” LU260 promotes development that provides for “recreational boating facilities including terminals, moorage and service facilities on publicly owned land and encourage(s) the provision of such facilities on private property, if the environmental impact is acceptable.” LU269 describes area objectives for different shoreline locations throughout Seattle, including Lake Union (the location of this proposal and use), and promotes development that retains “the working character of Lake Union by reserving those areas of the lake’s shorelines that are suitable for water-dependent uses for the use of marine businesses” and “prohibit new residential uses on industrial shorelines.”

The proposed piers will allow opportunities for the public to access and enjoy the shoreline environment of Lake Union and beyond, which is consistent with the goals and policies mentioned above. The proposed design of the project includes measures to mitigate for the increased in overwater coverage that will result from the project.

SMC 23.60.064 - Procedures for Obtaining Shoreline Substantial Development Permit

This application has followed the procedural requirements for a Master Use Permit as specified in subsection A of SMC 23.60.064. This section 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.

SMC 23.60.064.C. In evaluating whether a development that 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.*

The proposed project is not a prohibited use in the Urban Maritime Shoreline Environment. The proposed use for this project is the same as the current use (recreational marina). The project use is consistent with recreational marina use allowed in the UM Environment pursuant to SMC 23.60.724. The marina use is not prohibited in the underlying IC zone either.

2. *The development meets all applicable development standards of both the shoreline environment and underlying zone.*

The conformance of the project with the general development standards and development standards in the shoreline environment 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 Section 23.60.034, 23.60.036 or 23.60.032, respectively.*

The proposal does not require a shoreline conditional use or variance or special use approval.

**Shoreline Development Standards**

The project is located in the Urban Maritime Shoreline Environment. Pursuant to the Seattle Shoreline Master Plan, the proposed action is subject to the:

1. general development standards (SMC 23.60.152);
2. development standards for uses in the UM Shoreline Environment (SMC 23.60.720).

**1. SMC 23.60.152 - General Development Standards for all Shoreline Environments**

General standards for all uses and development in all shoreline environments are established in SMC Section 23.60.152. Generally, these standards require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with best management practices for the specific use or activity, in order to have minimal impact on the shoreline environment. The following general development standards are relevant to the proposed project:

- *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.*

- *Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.*
- *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 leakproof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.*
- *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.*
- *All shoreline developments and uses shall utilize permeable surfacing where practicable to minimize surface water accumulation and runoff.*
- *All shoreline developments and uses shall control erosion during project construction and operation.*
- *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.*
- *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.*
- *All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.*
- *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.*
- *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.*

This project is proposed to occur in the aquatic and shoreline environment of Lake Union that provides habitat for Chinook salmon. The project site serves as a migration corridor as well as potentially rearing area for juvenile Chinook salmon from the Cedar River and other water bodies in Water Resource Inventory Area 8. Additionally, predators of juvenile Chinook are known to inhabit areas under overwater structures and may use these areas as cover while preying on juvenile Chinook. Overwater coverage reduces the amount and quality of natural

habitat of juvenile Chinook salmon and provides habitat for predator species of juvenile Chinook. In order to mitigate for the increase in overwater coverage, the applicant proposes to remove an existing slip cover (minimum 715.5 square feet over water); grate existing pier sections for natural light penetration (363 square feet), and grate the proposed floats and ramp to minimize impacts of new floats. Best Management Practices will be employed during construction to protect the aquatic habitat.

As proposed and as conditioned below, the project complies with the above shoreline development standards.

#### SMC 23.60.720 - Development Standards in the UM Environment

The development standards set forth in the Urban Maritime Shoreline Environment relate to height, maximum size limits, lot coverage, view corridors, regulated public access, and location of uses (SMC 23.60.720). The proposed development has been reviewed and is consistent with these development standards.

#### **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 the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistent with WAC 173-14 and RCW 90.58. As discussed in the foregoing analysis, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

#### **DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT**

The Shoreline Substantial Development and the Shoreline Conditional Use are **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 Environmental Checklist dated December 10, 2012. The information in the SEPA checklist, supplemental information in the file, 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, 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.

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 Air Pollution Control 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 is limited to the installation of floating piers that will be attached to existing piles. It is likely that the piers will be at least partially assembled elsewhere and construction activities will be largely limited to assembly. However, with the proposed work taking place in and adjacent to Lake Union, there is potential for debris and other deleterious material to enter the water during this proposed work. 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 boom should be deployed around the construction area to contain 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. General in water construction activity will be restricted to in-water work windows established by the Washington Department of Fish and Wildlife and documented in the Hydraulic Project Approval for this project.

Construction material and equipment pose some potential danger of water and near shore contamination and shoreline erosion. 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, it is necessary to condition the project to require that prior to commencing construction an emergency containment plan and procedures be developed and all necessary equipment be stocked on the site. It is also warranted to require the use of BMPs to minimize erosion along the shoreline caused by storage and staging construction material in this area.

No further SEPA conditioning of potential short-term impacts appears to be warranted.

### Long Term Impacts

Long-term or use related impacts are also anticipated from the increase in overwater coverage. These long-term impacts are potentially significant without mitigation; therefore, merit a detailed discussion of the impacts and the required mitigation.

Plants and Animals

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit Lake Union including the proposed project area. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

This project is proposed to take place in Lake Union which is part of the migration corridor of Chinook salmon from the Cedar River and the other water bodies in Water Resource Inventory Area 8.

Clearly identified long-term impacts on juvenile Chinook salmon and the aquatic environment include the increase in over-water coverage of 408 sq. ft. Overwater coverage creates shading that provides hiding places for predators and forces juvenile salmon away from the near shore, where they are more susceptible to predation by larger fish; therefore, this decreases their survivability.

As provided by SMC 25.05.350 A, when making a threshold determination the lead agency may consider mitigation measures that the agency or applicant will implement. If the proposed measures mitigate the impacts that would allow the lead agency to issue a Determination of Non- Significance (DNS). These mitigation measures can be in the form of clarification of the proposal, changes to the proposal, or the project may be conditioned to include the mitigation measures. The applicant has included mitigation measures in the project to offset the impacts of the proposed work. DPD has imposed conditions on this project. These mitigation measures and conditions are listed below.

- Removal of solid boat slip cover (approximately 715.5 square feet).
- The proposed floating piers and ramps will be grated to increase light penetration to water below.
- Two sections of existing solid pier decking will be replaced with grated decking (approximately 363 square feet).

Collectively, these mitigation measures are believed to adequately mitigate for the expected impacts on juvenile salmon habitat as well as nearshore habitat for other species utilizing this area of Lake Union. Collectively these measures will reduce dark areas under the floating docks, which should in turn allow the juvenile salmon to remain in the shallow water during their migration and reduce the juvenile Chinooks' vulnerability to predation in the Lake Union environment.

**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 requirements 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 significant adverse impacts 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 – SEPA and Shorelines**

*During Construction*

1. Appropriate best management practices (BMPs) shall be employed to prevent debris and deleterious material from entering the Lake Washington Ship Canal during the proposed in- and adjacent to water. BMPs should include the deployment of a boom surrounding the construction area. The boom should remain in place for the duration of the proposed work.
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 work. A spill prevention and response plan and material should be kept at the site for quick response to any toxic spills, such as fuel, at the site.
3. Construction personnel should be trained in the plans and procedures for the prevention, containment and clean-up of toxic material.

*Prior to Building Permit Final*

4. Proposed mitigation plan shall be implemented as shown on Sheet A1.0. Two existing pier sections shall be redecked with grated decking and slip cover shall be removed (minimum 715 square feet).

Signature: (signature on file) Date: November 6, 2014  
Ben Perkowski, Land Use Planner  
Department of Planning and Development