



City of Seattle

Gregory J. Nickels, 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:** 3004212 and 3004213  
**Applicant Name:** Gregory Ashley for Barrick Benson  
**Address of Proposal:** 11740 and 11744 Riviera Place Northeast

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Permit to construct a 72 foot long, 542 sq. ft. shared residential pier accessory to two single family residences (11740 and 11744 Riviera Pl NE). Existing boatlift to be relocated and a second boatlift to be installed.

The following Master Use Permit components are required:

**Shoreline Substantial Development Permit** – to allow a shared residential pier in an Urban Residential (UR)/Conservancy Recreation (CR) Shoreline Environment – (Sections 23.60.540 and 23.60.362, Seattle Municipal Code)

**SEPA - Environmental Determination** - (Seattle Municipal Code (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**

Existing Conditions

Both subject sites (11740 and 11744 Riviera Place Northeast) are located east of Riviera Place Northeast along Lake Washington. The properties are zoned Single Family 5000 (SF 5000) within the Urban Residential/Conservancy Recreation (UR/CR) Shoreline Master Program designations. The lots are rectangular in shape with the long axis of each lot running almost 180' between Riviera Place Northeast and the inner harbor line of Lake Washington. Both sites slope

downward approximately 7' from the street front towards the lake with a generally flat area near the shore. One single family residence resides on each property. An existing hydraulic boat lift is situated approximately 7' offshore and adjacent to that portion of the bulkhead that located on the property addressed as 11744 Riviera Place Northeast.

#### Area Development

Properties north and south of the subject sites consist of single family residences with accessory piers. The Burke Gilman Trail and single family residences are located west of Riviera Place Northeast and upland from the subject sites.

The shoreward side (east) of Riviera Place Northeast is zoned SF 5000 UR/CR. Conversely, the landward side (west) of Riviera Place Northeast is zoned SF 5000 UR and SF 7200 UR.

#### Proposal

The applicant proposes to construct a new shared pier accessory to two existing single family residences located at 11740 and 11744 Riviera Place Northeast. The proposed pier would be attached to an existing vertical metal sheet pile bulkhead and equally straddle the boundary line between the two properties. The new shared pier would have a total area of 542 square feet (sq. ft.) and extend entirely over water at a distance of 72' from the bulkhead. This "T" shaped pier will be 4' in width for the first 20', increase to 6' in width and have an 8' by 24' configuration at the eastern end of the pier. A total of fourteen (14) supporting steel piles will be installed supporting decking comprised of "Thru-Flow" grating. The bottom of the new pier would be 1.5' above the ordinary high water (OHW) mark. The existing hydraulic boatlift will be relocated and a second hydraulic boatlift will be installed on the opposite side of the pier.

#### Public Comment

The public comment period for both projects ended April 14, 2006. During the public comment period, DPD received no written comments regarding these proposals.

### **ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

#### Substantial Development Permit Required

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 and other jurisdictions with shorelines, 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.

The proposal is subject to the Shoreline Policies of SMC 23.60.004 because the sites are located within the shoreline district and the cost of the project exceeds \$5000.

The proposed shared residential pier with attached hydraulic boatlifts has been designed to ensure minimum impact to the public health, land, and the waters of the state, and their aquatic life. The layout of the shared residential pier will not interfere with the public rights of navigation and corollary rights, thus providing for the management of the shorelines by planning for and fostering all reasonable and appropriate uses. Therefore, the subject application is consistent with the procedures outlined in RCW 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 (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 requirements use permit) or conditioning that is necessary to protect and enhance the shorelines area (SMC 23.60.064).

Pursuant to 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 the proposed use: 1) is not prohibited in the shoreline environment and the underlying zone and; 2) meets all applicable development standards of both the shoreline environment and underlying zone and; 3) satisfies the criteria for a shoreline variance, conditional use, and/or special use permits, if required.

### 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 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.

Both sites are classified as waterfront lots (SMC 23.60.924). The shoreline designations for the site are Urban Residential/Conservancy Recreation (UR/CR) (SMC 23.60.540 and 23.60.360). Residential piers are a permitted use in these shoreline environments.

### Development Standards

The proposal to construct a shared residential pier with attached hydraulic boatlifts that straddles the boundary line of two (2) residential properties is permitted outright in SMC 23.60.362 governing the CR shoreline environment. The proposed action is therefore subject to:

1. *the general development standards for all shoreline environments (SSMP 23.60.152);*
2. *the development standards for uses in the UR and CR environments (SSMP 23.60.570 and 23.60.390);*
3. *the development standards for piers and floats accessory to residential development (SSMP 23.60.204); as well as*
4. *the development standards for Single Family zones (SMC 23.44).*

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

These general standards apply to all uses in the shoreline environments. They 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 prevent degradation of land or water. All shoreline development and uses must: 1) minimize and control any increases in surface water runoff so that receiving water quality and shore properties are not adversely affected; 2) 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 3) be located, constructed, and operated so as not to be a hazard to public health and safety.

The proposed project's design as conditioned is consistent with these general standards for development within the shoreline area, thereby minimizing any adverse impact to the shoreline area, to water quality and will not be a hazard to the public health and safety.

#### 2. Development Standards for UR and CR Shoreline Environments (SSMP 23.60.570 and 23.60.390)

The development standard for the UR and CR environments pertinent to this proposal concerns lot coverage of all structures, including piers. The CR environment development standards also contain requirements for natural area protection.

The lot coverage regulations for both shoreline environments require that structures, including piers, not occupy an area greater than thirty-five (35) percent of a waterfront lot. Under the proposal, total lot coverage would be approximately 1,621 sq. ft. for the property addressed as 11744 Rivera Place Northeast and 1,397 sq. ft. for the property addressed as 11740 Riviera Place Northeast. Each subject lot's area is 5,400 sq. ft. Hence, lot coverage meets the requirements.

Natural area protection of the CR environment requires that all developments in this environment be located and designed to minimize adverse impacts to natural areas of biological significance and that development in critical natural areas be minimized. Critical areas include fish spawning areas and migration routes. The biological evaluation prepared by EcoPacific Environmental Services (dated February 17, 2006) evaluated both sites and determined, "the proposed project conforms as close as is practicable to RGP3," and believes it "warrants a '*not likely to adversely effect*' determination for ESA listed species in the area (i.e., salmon, bull trout, and bald eagles) and associated critical habitat". Design elements of the project have minimized the adverse impacts on the shoreline environment including fish spawning areas and fish migration routes. These design elements included the following:

1. Installing decking material (Otron ThruFlow dock panels) that would ensure minimal shading effect.
  2. Placing the bottom of the new pier 1.5' above OHW to increase the amount of light that reaches underneath the pier.
  3. Installing new 8" steel piles at least 18' apart along the main walkway in order to minimize impacts to Endangered Species Act (ESA) fish species due to modification of shallow habitats of the species or their predators.
3. Development Standards for Piers and Floats Accessory to Residential Development (SSMP 23.60.204)

These standards apply to residential development in the shoreline environment. The standards specify the size and location of piers and floats. Piers should be located generally parallel to side lot lines and perpendicular to the shoreline and the proposed pier would be consistent with this code requirement. The pier will be located within 15' of the side lot lines because it is a shared pier. The owners of both subject properties have submitted a joint use and maintenance agreement. The combined total width of the subject lots is exactly 60'. The proposed pier is 72' in length and will be less than the maximum 100' allowed from the shoreline and not beyond the length of the neighboring piers. The 8' by 24' pier extension will not exceed 150 sq. ft. allowed per each residence for shared piers. The proposed two boatlifts are in scale with the proposed shared pier. For these reasons, the proposed residential shared pier will be consistent with the code requirements for piers accessory to residential development.

4. General Development Standards for Single Family Zone Uses (23.44 SMC)

SMC 23.44.008 states that the development standards set out in this subchapter apply to principal and accessory uses permitted outright in single-family zones. The proposed shared pier is accessory to the single family residences and not a principal use which is not allowed outright in the zone. Therefore, the residential development complies with this code section.

### **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 conditionally proposed meets the specific standards for development in the CR environment. It also conforms to the general development standards, as well as the requirements of the underlying zone, therefore it should be approved.

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 conforms with specific development standards of the underlying zones, and having established that the proposed use and development are consistent with the Seattle Shoreline Program, the proposal, as conditioned below, is hereby approved.

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

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED** subject to the conditions 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 February 22, 2006. 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 following temporary or construction related impacts are expected: water impacts (disturbance of migrating fish by sedimentation and clouding due to pile driving); 2) noise impacts (also due to pile driving). These impacts are not considered significant because they are temporary (SMC Section 25.05.794). Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

### Water Impacts

Construction impacts to the lake environment will be mitigated by construction company procedures and the Washington Department of Fish and Wildlife's restriction on construction times. Specifically, all construction work will occur from a floating barge, there will be no equipment on the shoreline, and the barge will not be grounded.

### Noise Impacts

Noise impacts associated with pile driving would likely affect resident fish on Lake Washington. Due to this disturbance, the limitations of the Noise Ordinance are found to be inadequate to mitigate the potential noise impacts. SEPA Overview Policy (SMC 25.05.675 B) allows further mitigation for habitat disruption caused by construction noise and is warranted.

Compliance with these applicable policies and ordinances will be adequate to achieve sufficient mitigation and further mitigation by imposing specific conditions is not necessary for these impacts. Other city codes and/or ordinances apply to the proposal and will provide mitigation for the environmental health impacts.

### Underwater Habitat

Minimum disturbance of the lake sediments is expected since most work will be done above water. There is the potential for construction debris to enter the water during construction, so care will have to be taken to prevent this from occurring. In addition to the requirements set forth by SSMP 23.60.152, the general recommendations from Metro shall also be followed as conditioned below.

### Long-term Impacts

#### Plants and Animals

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit Lake Washington 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 Washington, which is rearing habitat and 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 continued existence of a bulkhead, an increase in over-water coverage and the presence of piles in the habitat of a threatened species. Over-water coverage and piles impact the quality of natural habitat of juvenile Chinook salmon by creating shading and providing structure for small mouth bass. Additionally, bulkheads tend to create deeper water habitat caused by erosion and water action at the bulkhead. When juvenile Chinook have no shallow water habitat, which provides refuge from predators, during their out-migration they are more susceptible to predation by larger fish; therefore, this decreases their survival.

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. Proposed mitigation measures may 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 and DPD has imposed conditions on this project. These mitigation measures and conditions are listed below.

1. Installing decking material (Otron ThruFlow dock panels) that would ensure minimal shading effect.
2. Placing the bottom of the new pier 1.5' above OHW to increase the amount of light that reaches underneath the pier.
3. Installing new 8" steel piles at least 18' apart along the main walkway in order to minimize impacts to Endangered Species Act (ESA) fish species due to modification of shallow habitats of the species or their predators.
4. Install a total of eight (8) planters (four (4) planters per residence) containing native shrubs along the existing bulkhead.

Each of these mitigation measures and conditions are believed to minimize impacts on juvenile salmon habitat at the site and improve the aquatic habitat for juvenile Chinook salmon and other species. Collectively these measures will eliminate the dark areas that may exist under the dock and eliminate structure in the shallow water habitat, 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. Locating the bulkhead at or above OHW will minimize impact of the bulkhead caused by wave action. Additionally, terrestrial vegetation adds detritus material to the aquatic environment, which benefits the salmon through the food web. Terrestrial vegetation also directly benefits salmon by providing a food source in the form of terrestrial insects that drop into the water. Therefore, the riparian vegetation planted along the shoreline will increase the allocation of insects and detritus to the aquatic environment providing food for juvenile salmon and nutrients for other aquatic organisms.

### Summary

In conclusion, several effects on the environment may result from the proposed development. However, by following the proposed mitigation measure, these effects will not be significant. The conditions imposed at the end of this report are intended to mitigate specific impacts identified in the foregoing analysis, to control impacts not adequately regulated by codes or ordinances, per adopted City policies.

## **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 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).

## **SEPA AND SHORELINE CONDITIONS**

The following conditions 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.

### **Prior to Issuance of a Construction Permit**

The owner(s) and/or responsible party(s) shall:

1. Develop a Best Management Practices (BMP) Plan to be included on the plan set. The BMP plan shall indicate how construction will take place to ensure that no debris or deleterious material shall enter the water through the duration of the proposed work.
2. Spill prevention and response procedures shall be developed prior to commencement of construction and the appropriate material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site. This information shall be provided on the construction plan set.
3. Install a total of eight (8) planters (four (4) planters per residence) containing native shrubs along the existing bulkhead. The planter size, genus/species name and location should be included on the plan set.

### **Prior to Commencement of Construction**

4. No toxic materials, petrochemicals and other pollutants shall enter the surface water during the proposed construction work. The spill prevention and response procedures developed for this project shall be followed and the appropriate material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.
5. Personnel shall be trained in the plans and procedures for the prevention, containment and clean-up of toxic material.

During Construction

6. 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.
  - a. If floating 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.
  - b. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.
7. 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.
8. No treated wood shall be used in the decking material.
9. No fascia shall be installed because it blocks natural light from reaching under the pier.
10. Grating of the deck of the pier shall occur per plans.
11. 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.
12. 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.

For the Life of the Project

13. The shrubs planted in the planters shall be maintained and shall be replaced at a one to one ratio for any plants that do not survive. Replacement plants shall be native plants of a similar type.
14. The deck surface shall remain unobstructed and the grates shall remain free of debris so that light can pass through the open areas of the deck.

Signature: \_\_\_\_\_ (signature on file)  
Tamara Garrett, Land Use Planner  
Department of Planning and Development

Date: July 10, 2006