City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
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CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Number:	2402973 2403529 2403530 2403531 2403532
Applicant Name:	Brett Aggen and Jim Warjone
Address of Proposal:	4601 Shilshole Ave NW

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to locate five floating boat repair sheds and establish use for minor vessel repair. Project includes one six-foot by 200-foot floating pier along the shoreward side of the sheds and removal of up to 31 existing timber pilings and installation of up to 14 new steel piles, and the addition of 20 parking spaces to the site.

The following approvals are required:

- **Shoreline Substantial Development Permit** – (SMC Chapter 23.60)
- **SEPA - Environmental Determination** - (SMC Chapter 25.05)

SEPA DETERMINATION: [ ] Exempt [ ] DNS [ ] MDNS [ ] EIS

[X] DNS with conditions*

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

BACKGROUND DATA

Site Area and Vicinity Development

The subject site is located on a waterfront parcel on the Salmon Bay Waterway, along Shilshole Ave. NW between 20th Ave. NW and the Ballard Bridge, at the property known as the Ballard Mill Marina. The site is zoned Industrial General 1 with an unlimited height limit for industrial uses and 65 feet for non-industrial uses (IG1 U/65) and is within an Urban Industrial (UI) shoreline environment. The site has an area of approximately 13 acres, including submerged land. The site is developed with commercial moorage and vessel repair.

The area where the proposed floating sheds will be located is currently used for moorage of six to eight large fishing vessels ranging in length from 120 to 240 feet. The dry land portion of the site is developed with asphalt, concrete and five larger buildings that are used for vessel repair, in addition to six smaller buildings (including public restrooms and showers), and accessory parking for 135 vehicles.

Most of the surrounding property is also zoned IG1-U/65', but the zoning changes to IG2-U/65' across Shilshole Ave. NW. Salmon Bay Waterway abuts the site on the southern boundary.

Proposal

The proposal is to moor five floating boar repair sheds to be used for minor vessel repair. Pilings will be removed to allow access for shed moorage, and a floating pier will be placed along the shoreward side of the five sheds to be attached to the sheds to provide access. Two of the sheds will measure 120 feet by 36 feet, two will measure 100 feet by 36 feet, and one will be 100 feet by 34 feet. The sheds will draw between three to four feet of water (when empty) and will be moored a minimum of 18 to 24 feet from the existing wharf where the depth is approximately 20 feet or more. The proposed floating pier will measure six feet wide by 200 feet long, and will have a two-foot wide grated panel in the center for the length of the pier. The floating pier will be placed adjacent to the five floating sheds for access, approximately 18 to 25.5 feet waterward of the existing wharf.

The project includes the removal of: twenty-one (21) treated timber fender piles adjacent to the existing wharf; a ten (10) pile mooring dolphin located approximately 100 feet from the wharf; and, thirty-one (31) treated timber piles between 14-inch and 16-inch in diameter from the area adjacent to the wharf. The project also includes the addition of twenty new parking spaces on the dry land portion of the site.

Public Comment

No public comments were received during the public comment period, which ended on July 23, 2004.

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 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/or special use permits as may be 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.

The proposed development action will occur over water and is located within an Urban Industrial (UI) shoreline environment. The purpose of the UI Environment is to provide efficient use of industrial shorelines for water-dependent and water-related industrial uses. The code allows marine retail sales and services uses, including the proposed minor vessel repair, outright over water, as a principal use on a waterfront lot within the Urban Industrial (UI) Shoreline Environment (SMC 23.60.840).

Development Standards

Marine retail sales and services must meet the development standards for the UI Environment (SMC 23.60.870), as well as the general development standards for all shoreline environments (SMC 23.60.152). Additionally, the proposed project must also meet the development standards of the underlying General Industrial (IG1 U/65) zone (SMC 23.50). The Director may attach to the permit or authorize any conditions necessary to carry out the spirit and purpose of, and ensure the compliance with, the Seattle Shoreline Master Program (SMC 23.60.064).

The proposed action is therefore subject to the following general and specific shoreline development standards:

General Development Standards for all Shoreline Environments (SMC 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. All shoreline development and uses must, in part: 1) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected; 2) be located, designed, constructed, and managed in a manner that minimizes adverse impact 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 floating boat repair structures, as conditioned and mitigated, are consistent with the general standards for development within the shoreline area. General development standards (SSMP 23.60.152) state that Best Management Practices shall be followed for any development in the shoreline environment. These measures are required to prevent contamination of land and water. The Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. A condition is imposed on this permit pursuant to Shoreline and SEPA authority, to ensure that Best Management Practices are followed. To ensure conformance with the General Development Standards and the Shoreline Master Program, the proponent will be required to notify contractors and subcontractors of the conditions of this permit.

Development Standards for UI Shoreline Environments (SMC 23.60.870)

The development standards set forth in the Urban Industrial Shoreline Environment are as follows:

SMC 23.60.872 Height in the UI Environment

The development standard limits the height of structures to a maximum height of 35-ft. All of the proposed floating boat sheds will be 35 feet or less in height.

SMC 23.60.874 Lot coverage in the UI Environment

Structures may occupy up to one hundred percent of both submerged and dry-land areas of waterfront lots in the UI environment.

SMC 23.60.874 View corridors in the UI Environment

A view corridor is not required for this project, since water-dependent and water-related uses occupy more than 50 percent of the dry land portion of the lot

SMC 23.60.880 Development standards specific to water-related uses on waterfront lots in the UI Environment.

A. Water-related uses shall be designed and located on the shoreline to encourage efficient use of the shoreline. Design considerations may include setbacks from all or a portion of the waters' edge, joint use of piers and wharves with other water-related or water-dependent uses, development of the lot with a mixture of water-related and water-dependent uses, or other means of ensuring continued efficient use of the shoreline.

The project is designed to maintain the existing level of efficient use of the shoreline with one pier that will serve all five sheds.

SMC 23.60.882 Regulated public access in the UI Environment

This use is considered a water-related use and is not required to provide public access.

C. THE PROVISIONS OF CHAPTER 173-27 WAC

Chapter 173-27 of the WAC, sets forth permit requirements for development in shoreline environments and gives the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and the RCW 90.58 incorporates the policies of the WAC by reference. These policies have been addressed in the foregoing analysis and have fulfilled the intent of WAC 173-27.

Summary

The proposed project, as conditioned, including the proposed mitigation, is 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 (SSMP), thereby minimizing any adverse impact to the shoreline environment, to water quality, to the natural shoreline processes, and the surrounding land and water uses.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

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

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated May 16, 2004 and the Biological Evaluation (BE) dated June 10, 2004. The information in the checklist, BE, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 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 (SMC 225.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-Term Impacts

Construction Impacts

The SEPA Overview Policy (SMC 25.05.665) and the SEPA Construction Impacts Policy (SMC 25.05.675B) allow the reviewing agency to mitigate impacts associated with construction activities.

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 the aquatic environment 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 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 applicant's SEPA Checklist discloses that the proposed construction work will take place in and over the waters of Lake Union. With the proposed work taking place in and over-water there exists the 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 twice per day. This material should be contained on site and then disposed of at the appropriate upland facility. Construction impacts to the ship canal environment will be mitigated by construction company procedures and wildlife agency restrictions on construction times. Construction activity will be restricted to October 1 through April 15 by the Corps of Engineers Chinook Salmon and Bull Trout Work Windows for the Lake Washington Ship Canal System.

Construction material and equipment pose some potential of adverse impacts to water quality and aquatic habitat conditions. Contamination and erosion 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 the potential for deleterious material from entering the ship canal during construction and to minimize construction activities' negative impacts.

Construction activities are not expected to affect the surrounding area. Construction material will be delivered via the water therefore there will be no impacts on traffic. This impact is minimal, and therefore no further mitigation is warranted.

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 proposal and include: increased overwater coverage and possibly increased human activity in the shoreline environment, which can lead to increased adverse impacts on fish behavior and habitat. These long-term impacts may be considered minor, if appropriately mitigated, resulting in a determination of non-significance. Therefore the long-term impacts merit more detailed discussion in relation to the need for mitigation.

Plants and Animals

The structures are located entirely over water for a total of 19,040 s.f. from the boat sheds and 1,200 s.f. for the new float that will be used to access the sheds.

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit the Lake Washington Ship Canal 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 occur in the aquatic and shoreline environment of the Lake Washington Ship Canal, which is habitat of Chinook salmon. The project site serves as a migration corridor as well as potentially a 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. Small mouth bass, an introduced predator of juvenile Chinook, also use the base of pilings under pier structures as nesting sites.

Overwater coverage reduces the amount and quality of natural habitat of juvenile Chinook salmon and provides habitat for predator species of juvenile Chinook. The location of the overwater coverage is in between the bulkhead and wharf structures, and the open water that abuts the conservancy navigation shoreline designation. This new overwater coverage is designed to be placed in deeper water, which will mitigate some of the impacts. Additionally mitigation will occur through a reduction of the total number of pilings at this site. Thirty-one creosote treated piling will be removed and 14 steel piles will be installed.

The project proponent has also developed mitigation in the form of debris removal and substrate amendment in conjunction with Seattle Department of Parks and Recreation's (DOPAR) South Lake Union Park Project. DPD has received an agreement between the project proponent and Ken Bounds, the Director of DOPAR that explains the amount and location of debris removal and substrate amending that will occur. This work will include the removal of large debris that is floating in the water and along the shoreline and in the area that the substrate is to be amended and the placement of a 30 to 35 foot wide bed of gravel 12" thick from the ordinary high water mark (OHWM) out 20' and tapering to 8" thick for an additional 15'. The mitigation area will extend approximately 30'-35' from OHWM out into the lake and 250'-280' parallel to the shore at the northwestern end of DOPAR's property in Waterway #3. This gravel placement is intended to be an overlay of the existing bottom material and will be done without digging into the silt bottom. It is intended to cover much of the existing concrete and asphalt rubble which will eliminate undesirable salmonid predator habitat while, at the same time, providing desirable salmonid habitat. The mitigation will cover an area of approximately 8500 square feet using approximately 260 cubic yards of gravel and sand which would be deposited from the water side using a barge. This work is proposed in the nearshore areas of the south end of Lake Union. The conditions of this project will include the above stated mitigation.

Environmental Health/Water Quality

SEPA Policy 25.05.675-F provides the authority to mitigate impacts resulting from toxic or hazardous materials and transmissions. The location of the subject project is over the water and this area will be used for boat repair work. Material that will be used at the site includes but is not limited to: fiberglass, fiberglass resin, paint, gelcoat, and petroleum products. There exists potential to drop some of this hazardous material into the water and this would adversely impact water quality, plants and animals and the general welfare of the aquatic environment. Additionally, other such work such as sanding can introduce deleterious material into the aquatic environment. In light of this, the proposal will be conditioned to require that all people that repair boats or use any deleterious material in association with this project shall read, sign and follow the Best Management Practices plan developed for this site. This plan includes a description of preventative measures that shall be used to prevent toxic substances from entering the Lake Washington Ship Canal, measures that will be taken, in the event of a toxic spill, and the requirement that an emergency spill kit be kept at the site. Additionally, trained personnel will be required to be on-site to implement the toxic spill clean-up plan.

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 with conditions. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(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 CONDITIONS

Prior to issuance of Master Use Permit

1. The Best Management Plan shall be revised to include a description of required measures that will ensure that hazardous or toxic materials are controlled during normal operation of the repair work. Additionally, this plan shall include measures that will be taken in the event of a toxic spill, and the requirement that an emergency spill kit be kept at the site. The appropriate number of personnel shall be trained to ensure the proper implementation of this plan.

2. The plan set shall be updated to include the mitigation site with a copy of the agreement between the applicant and the Seattle Department of Parks and Recreation and a copy of the updated Best Management Plan.

3. The agreement between the applicant and the Seattle Department of Parks and Recreation will be implemented. Per this agreement a payment of $23,451 will be paid to DOPAR for the following work: Removal of large debris that is floating in the water and along the shoreline and in the area that the substrate is to be amended and the placement of a 30 to 35 foot wide bed of gravel 12" thick from the ordinary high water mark (OHWM) out 20' and tapering to 8" thick for an additional 15'. The mitigation area will extend approximately 30'-35' from OHWM out into the lake and 250'-280' parallel to the shore at the Northwestern end of DOPAR's property in Waterway #3. This gravel placement is intended to be an overlay of the existing bottom material and will be done without digging into the silt bottom. It is intended to cover much of the existing concrete and asphalt rubble which will eliminate undesirable salmonid predator habitat while, at the same time, providing desirable salmonid habitat. The mitigation will cover an area of approximately 8500 square feet using approximately 260 cubic yards of gravel and sand which would be deposited from the water side using a barge. The applicant will be responsible for additional cost between the current estimate (above) and the actual bid that DOPAR receives for the scope of work outlined above.

During Construction

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 shall be laminated with clear plastic or other waterproof material and shall remain posted on-site for the duration of the construction.

4. Implement appropriate Best Management Practices (BMPs) that will keep any hazardous material or any other debris from entering the waters of the Lake Washington Ship Canal.

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

6. Install a silt curtain around the work area to keep turbid water confined so that it doesn't impact surrounding water quality during pile removal and installation.

7. The silt curtain or a floating boom shall be also used to contain any debris that falls into the water. Floating debris that enters the water during the proposed work shall be

removed at a minimum of twice daily and stored properly until it can be disposed of at an appropriate upland facility.

8. If sinking debris enters the water during the proposed work, the location of the debris shall be recorded in a log that is kept on site for the duration of the work. When all proposed work is complete a diver shall retrieve all debris that has entered the water as a result of the proposed work.

Permanent for the Life of the Project:

9. The mitigation to be performed in conjunction with DOPAR's South Lake Union Park project shall be implemented. If for any reason this work cannot be completed the project proponent will need to renegotiate mitigation for the impacts of this project and revise this shoreline permit to include new mitigation that is agreed upon.

10. Each person that repairs boats at this site shall be required to read, sign, and follow the Best Management Practices plan that has been developed for this project.

11. The spill prevention kit shall be located on site and at least three (3) employees shall be properly trained in using the spill protection kit.

Signature: (signature on file) Date: September 29, 2005
Molly Hurley, Senior Land Use Planner
Department of Planning and Development

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