

Graves, Natalie (Consultant)

From: Halsted, Jesse (Consultant)
Sent: Monday, October 22, 2007 5:28 PM
To: Fendt, Kathy (Consultant); Kassebaum, Carl; Stenberg, Kathryn
Subject: RE: Ordinance Proposal

Attachments: Director's Report for early projects 10.07.doc; Early Projects ord Oct.'07.doc; Early Projects 10.07 shoreline.doc; Director's Shoreline Report for early projects 10.07.doc; Early Projects ord Oct.'07 JLH.doc

Ok so trying to keep my thoughts in order.

1) First this amendment is an attempt to fix a recognized loophole in the code that would seem to not consider staging as a "use." However it does not actually fix the loophole but simply creates a different process for AWV staging only and does not fix the broader issues. It also leaves several questions/issues unresolved that I think will continue to cause process problems;

a) "staging" is not a used or defined term in the land use code. The write up for this amendment says "There is no use classification explicitly applicable to staging areas in support of roadway and utility work in either the shoreline or the non-shoreline portions of the Land Use Code." This sentence seems to assume that staging is indeed considered a use but the amendment does not address the problem other than in a limited fashion for the moving forward project. It does not resolve the issue of how AWV staging differs from activities called out in the definitions of "Outdoor Storage" and "Construction Services" (the two defined uses most similar to the concept of staging) which exclude from the "use" staging like activities associated with active permits and construction sites. This exclusion of staging like activities from the "use" suggests that staging is not traditionally considered a specific land use but is simply a necessary process to achieve a different primary use. A possible interpretation of why this amendment does not define staging in a more holistic fashion is that the City wants to continue not regulating staging in general but does want to regulate AWV activities specifically, imposing these new requirements.

b) Assuming staging can be a "use," this amendment does not address the situation that occurred on the Yesler Way Vicinity Project where a small portion of a parcel was used for staging. DPD concluded that it could be considered "temporary ROW" that would not require a land use permit and could be reviewed as part of the Street Use permit. Unless DPD is backing away from that analysis in favor of this new process, the concept of temporary ROW should be discussed if not called out in code.

This issue is complicated by recent discussion regarding whether SDOT has jurisdiction over WSDOT ROW. SDOT staff have indicated that they believe all lands within the city are either considered ROW under the jurisdiction of the street use code or a parcel under the jurisdiction of the land use code. If WSDOT is unwilling or unable to give control of WSDOT ROW over to the City prior to the completion of construction and therefore Street Use does not have jurisdiction then DPD may want to assert control over portions of the project including staging in areas they otherwise would have considered temporary ROW. WSDOT should consider involving the AGs office on how and if these two code sections apply or don't to WSDOT ROW.

c) Assuming staging can be considered a use it is not necessarily prohibited in all zones. 23.42.010 allows DPD to process undefined uses as they would a defined use that is similar. Both outdoor storage and construction activities, the two uses most similar to staging, are permitted in all industrial zones which cover most of the southern projects for AWV. This change to a permitted use would still require a Type I MUP so it may involve the same process as the proposed amendment but is further suggestion that the City is treating AWV staging differently.

SDOT staff have indicated that it is their understanding that despite the language of 23.42.010 all undefined uses are by default prohibited, potentially as a result of previous court decisions. If this is the case then staging as a use would be prohibited and require a temporary use permit as Type II MUP but would only be valid for 6 months. This issue needs further resolution with DPD.

2) If WSDOT supports or at least coalesces to the new process proposed by this amendment there are a couple issues;

a) The application process for the amendment would require submittal of a "mitigation plan" addressing how the impacts of staging will be mitigated. It appears that the level of detail requested will be difficult for WSDOT to produce prior to contractor involvement. There needs to be some understanding between WSDOT and DPD that some of this information can not be provided during design and that permits would need to be based on performance standards with the possibility of later contractor submittals. This is particularly important if the shoreline is involved because schedules

may not allow for a Type II MUP process between award and the start of construction. This issue needs to be addressed before this amendment is finalized.

b) The dichotomy of the proposed amendment, with nearly identical language both in the new 23.42.041 and amended 23.60.207, appears not only unnecessary but problematic. Because 23.60.207 is only applicable to the shoreline district, as proposed the amendment would seem to require a staging area in the shoreline district to apply for both a Type I MUP for the underlying zoning and a Type II MUP for the shoreline district. I do not believe this is the intention of the amendment but because of the code location of the shoreline portion, is the result. The language could be combined in either a new 23.42.041 or as a new subsection in 23.42.040 similar to the process for Sound Transit. Because 23.42 is a general section applicable to all zoning any language here would apply to the shoreline.

c) The two new categories of a Type I and II MUP need called out in the MUP activity list in 23.76.006. This would reflect the structure of the code for other MUPs

d) Attached are versions of the four amendment documents with specific language comments, some comments applicable to both the general and shoreline documents only appear in the general document since the text is substantially identical. Also attached is a version of the code amendment reorganized and supplemented to address some of the structure problems I saw; This amendment has my initials JLH in the file name.



Director's Report
for early pr...



Early Projects ord
Oct.'07.doc...



Early Projects
10.07 shoreline...



Director's Shoreline
Report fo...



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Oct.'07 JLH...

Jesse Halsted
Alaskan Way Viaduct and Seawall Replacement Program
Permit Team
206-267-6884

From: Fendt, Kathy (Consultant)
Sent: Thursday, October 11, 2007 11:18 AM
To: Halsted, Jesse (Consultant); Kassebaum, Carl; Stenberg, Kathryn
Subject: FW: Ordinance Proposal
Importance: High

OK, friends. The long-awaited ordinances and director's reports to address staging, drafted by Diane Althouse (SDOT), and provided to us yesterday for review. I had a brief chat with Diane yesterday about the fact that the current code doesn't seem to control staging at all. It sounds like DPD is adamant that they want to close that loophole. So here's how the City proposes to do that.

Note that the City seems to feel that the SEPA documents they complete for these ordinances need to get into a certain level of detail about the scope of the projects themselves. I suspect this means that if the Lenora to BST project scope is not decided quickly, the City would probably choose to delete that project from the ordinances.

Jesee/Carl - please review and provide any comments to me by end of day October 18th. Note that Diane wants input on specific types of activities that we would define as staging for these projects.

Kate - do you want to send these to the AG's office for review as well?

Kathy Fendt
Alaskan Way Viaduct and Seawall Replacement Project
Permitting Team
(206) 267-3833

-----Original Message-----

From: Diane Althaus [<mailto:Diane.Althaus@Seattle.Gov>]
Sent: Wednesday, October 10, 2007 8:11 AM
To: Vogt, Lisa (Consultant)
Subject: RE: Ordinance Proposal

Thanks for offering, Lisa. I sent the electronic files to Kate yesterday, but will attach them to this reply so you can print them out for the group. There are two sets: a Director's Report and an ordinance for shoreline, and the same documents for non-shoreline. Let me know if you have any questions or have any problems with the documents.

Diane

>>> "Vogt, Lisa (Consultant)" <VogtL@consultant.wsdot.wa.gov> 10/9/2007

>>> 4:38 PM >>>

Do you want copies of the material for the meeting. If you do, if you send it to me I can print it off. If you haven't already.

Lisa

Lisa Vogt
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-----Original Message-----

From: Joyce Kling [<mailto:Joyce.Kling@Seattle.Gov>]
Sent: Tuesday, October 09, 2007 12:10 PM
To: Stenberg, Kathryn
Cc: Chuck Kirchner; Sandra Gurkewitz; Vogt, Lisa (Consultant)
Subject: Ordinance Proposal

Hi, Kate.

We have a proposed ordinance, director's report, and associated material ready for EST review. We also have a few issues we'd like to discuss with you tomorrow.

I've asked Diane Althaus to join us. She'll send 2 ordinances (one for the shoreline amendments) and director's reports shortly. The environmental checklists are being reviewed, and we hope to go to publication of an environmental determination around October 21.

I hope we have time on the agenda--say, 10 to 15 minutes.

Thanks.

Joyce

*** eSafe1 scanned this email and found no malicious content ***

*** IMPORTANT: Do not open attachments from unrecognized senders *** << File: Director's Shoreline Report for early projects 10.07.doc >> << File: Early Projects 10.07 shoreline.doc >> << File: Director's Report for early projects 10.07.doc >> << File: Early Projects ord Oct.'07.doc >>