

**BEFORE THE LAND USE HEARINGS EXAMINER
CITY OF VANCOUVER, WASHINGTON**

**REGARDING THE APPLICATION FOR)
MAINTENANCE DREDGING AND PILING)
REPLACEMENT AT THE MARINE BOAT)
PARK IN THE CITY OF VANCOUVER,)
CLARK COUNTY, WA.)
)**

**FINAL ORDER
&
RECOMMENDATION
MARINE PARK BOAT LAUNCH
DREDGING
PRJ2002-00971/SHL2002-00003**

RECOMMENDED AND APPROVED WITH CONDITIONS

INTRODUCTION

The application is for maintenance dredging and the replacement of two existing pilings at the Marine Park boat launch facility. The boat launch was constructed in 1972. The depth of the basin was -1.5 feet, Columbia River Datum (CRD). Maintenance dredging was done in 1990 and 1996. On each occasion the basin was dredged to the original depth of -1.5 feet CRD and encompassed the removal of between 1,400 and 2,000 cubic yards of material.

The proposed dredging is for the removal of approximately 3,800 cubic yards from a footprint of 1.2 acres. The dredging will be to a depth of -5 feet CRD (3.5 feet deeper than the original dredging). Adjacent land uses include Recreational and Industrial. Adjacent zoning designation are Open Space, ML and MH.

Location: The existing boat ramp is on the Columbia River at River Mile 109, in the SW 1/4 of Section 36, T2N, R1E, of the Willamette Meridian (latitude 45 degrees, 46 minutes, 30 seconds; longitude 122 degrees, 37 minutes, 30 seconds). Parcel Size: 1.47 acres

Applicant/Contact: Tim Haldeman, Superintendent
City of Vancouver, Operations Center
P.O. Box 1995
Vancouver, Washington, 98668-1995

Property Owner: Same as Applicant

SEPA: An Addendum to the 1990 and 1995 DNS was issued on July 30, 2002.

Zoning District: Park

Comprehensive Plan: Open Space

HEARING AND RECORD

The Public Hearing on this matter was held on August 5, 2002 and the record was closed at the end of the hearing. A record of all testimony received into the record is included herein as Exhibit I (Parties of Record), Exhibit II (Audio Tape), and Exhibit III (Written Testimony, exhibits 1-9). These exhibits are filed at the City of Vancouver Development Review Services.

The Examiner has conducted an unaccompanied site visit prior to the Hearing. There was no opposition testimony and there is no opposition noted in the record.

FINDINGS

The Hearing Examiner adopts as his own and incorporates by reference the findings and conclusions contained in the STAFF REPORT AND RECOMMENDATION (dated August 19, 2002), in its entirety. Only the issues and the approval criteria raised in the course of the application, at the hearing or before the close of the record, are discussed in this section. Any standard that might be deemed to be an applicable approval criteria but which was not raised by staff, the applicant or a party to the proceeding has been waived as a contested issue, and no argument with regard to any such issue or criterion can be raised in any subsequent appeal. Criteria not discussed specifically in these findings below are deemed to be met. The following findings support this decision and are related to the issues that were raised during these proceedings.

Background:

The boat launch was constructed in 1972 to a depth of -1.5 Columbia River Datum (CRD). Since then, the boat launch has required maintenance dredging in 1990 and 1996. A 1990 SEPA Checklist and a subsequent US Army Corps of Engineers (Corps) permit authorized the removal of 1,400 cubic yards of sediment that had accumulated in the boat basin. The City conducted maintenance dredging again in 1996 under a Corps permit (#94-1-01953), which expired in 1999. The current maintenance dredging proposal is for the removal of approximately 3,800 cubic yards from a footprint of 1.2 acres or 51,000 square feet.

The Staff Report identified as the key issue compliance with the various water-related regulations as administered by the City of Vancouver, the U.S. Army Corps of Engineers, and the Washington State Department of Fish and Wildlife. The applicant has obtained, or is in the process of obtaining, the required permits from these agencies.

COMPREHENSIVE PLAN

Land Use Designation: Open Space. The proposal meets the intent of the Comprehensive Plan.

VANCOUVER MUNICIPAL CODE (VMC)

Only conclusions and findings are discussed in this decision. For discussion and text of appropriate regulations and policies consult the Staff Report.

Title 20 Zoning

20.51 Flood Plain Combining District

20.51.400 Regulations of Uses

Section 20.51.400 B indicates that all park, recreational, agricultural, and other similar open space uses are permitted outright in the Flood Way and Flood Fringe Zones, along with accessory structures, provided such uses cannot involve any structures, fill, or storage of materials.

The application is for maintenance of the existing boat launch facility. This is a recreational facility. The continuation of the boat launch use is allowed in the Flood Plain and Floodway.

20.51.520 Specific Standards

The project does not involve any new structures other than those which will be replaced as maintenance. The proposed project is not required to meet the flood proofing standards.

20.56 Shoreline Combining District

The applicant has submitted information addressing the policies and regulations that relate to the proposed dredging and the continued use of the site as public boat launch facility.

The proposed maintenance dredging and pile replacement within the aquatic environment will increase the safety and operability of the boat launch, a water-enjoyment use, which is a permitted use in the adjacent Urban High Intensity Environment.

Water enjoyment uses such as the boat launch are permitted in both the Aquatic Environment and the Urban High Intensity Environment (Upland Environment). Maintenance dredging is a conditional use in the aquatic and upland environment of the project site.

Measures to avoid or minimize adverse impacts to the shoreline environment and its natural processes include the following:

1. Dredging will be conducted between November 1 and February 28 to avoid the peak out-migration of juvenile salmon and steelhead.
2. In-water disposal of dredged materials or beach nourishment will not occur as part of this project. Dredged materials will be deposited at an approved, upland disposal site.

3. Dredging is proposed to occur in the smallest footprint necessary to enable boat access at low water and to prolong the re-deposition of sediments in the basin.
4. As recommended by NMFS, native vegetation, including black cottonwood and willow cuttings, will be planted upstream of the boat launch to mitigate for the temporary, potential reduction of benthic resources to listed fish. These plantings will be installed and maintained on City-owned shoreline property.

16 REGULATION:

The contractor will be required to use Best Management Practices during maintenance dredging and pile replacement. The project will comply with permitting requirements set forth by the Corps and WDFW.

Maintenance dredging will be restricted spatially and temporally, thereby avoiding or minimizing any adverse impacts to the environment. Impacts to potential benthic resources used by listed salmonids will be mitigated by installing native vegetation in the riparian zone east of the boat launch. Benthic invertebrates, an important food source for juvenile salmonids, consume detritus or particulate organic matter that originates from shoreline vegetation.

The following Public Access-related City Shoreline Management Master Program Policies and Regulations are applicable to the proposal:

14 POLICY:

Visual access from the shoreline and upland areas will be maintained, if not enhanced by the proposal. Two pilings require replacement, but no new structures are proposed. Native vegetation is required to be planted in the wooded area east of the boat launch. These native plantings will enhance the natural character of the shoreline within the Marine Park. Plantings will include black cottonwood and willow cuttings, consistent with the existing vegetation.

29 REGULATION:

No vegetation will be removed as part of this proposal.

31 REGULATION:

No new development is proposed landward or waterward from the OHWM. The proposal consists of removing 3,800 cubic yards of sediment that has built up in the middle of the boat basin and replacing two damaged pilings. The existing boat launch consists of two wooden floating docks and associated pilings. These structures cover very little of the developable surface area along the Marine Park shoreline.

32 REGULATION:

The existing pilings supporting the wooden docks are less than 35 feet in height. Two pilings are proposed to be replaced. No new structures are proposed. Surrounding areas consist of the

Columbia Business Center and the City of Vancouver Marine Park. The nearest residence is located 0.75 miles to the north.

15 POLICY:

The purpose of the proposal is to improve public access to the Columbia River by removing sediment deposits from the boat basin. Currently, the boat basin poses potential hazards to boats during low water. Maintenance dredging will increase the safety and accessibility of the boat launch to recreational boaters.

The following Shoreline Modification and Vegetation Management-related City Shoreline Management Master Program Policies and Regulations are applicable to the proposal:

19 POLICY:

All appropriate permits for proposed maintenance dredging will be obtained before sediment removal commences. Hydraulic Project Approval from WDFW has already been issued and authorizes in-water work from November 1, 2002 to February 28, 2003. Maintenance dredging is necessary to increase the efficiency and safety of the existing Marine Park boat launch. No extensive land modifications are proposed.

41 REGULATION:

No native plant communities will be removed within the shoreline jurisdiction area.

42 REGULATION:

The proposal does not involve substantial modification, realignment or straightening of a waterbody. Maintenance dredging is required to restore and increase the capacity of the existing boat basin to provide recreational access to the Columbia River for innumerable users.

Proposed maintenance dredging will be restricted to a footprint of 51,000 square feet or 1.2 acres of river bottom. This area represents a small portion of the Columbia River channel which spans 0.8 miles wide in the project vicinity. The proposed dredging area overlaps with the original boat basin excavated in 1972 and is proposed to be somewhat larger and 3.5 feet deeper. The basin has undergone maintenance dredging in 1990 and 1996.

44 REGULATION:

Consistent with the policies of the shoreline master program, proposed native plantings on City-owned property east of the boat launch will enhance the natural character of the shoreline and provide organic input into the river system important to numerous aquatic species.

The following Shorelines of Statewide Significance-related City Shoreline Management Master Program Policies and Regulations are applicable to the proposal:

POLICY: The following priorities are set forth in order of preference for Shorelines of Statewide Significance (RCW 90.58.020):

- The Marine Park boat launch is a public amenity that provides access to the Columbia River for local and regional recreational boat users. Fishermen that use the boat launch are required to purchase fishing licenses from the Washington State Department of Fish and Wildlife. Therefore, the operational safety of the boat launch.
- The natural character of the shoreline will be preserved and enhanced through native plantings proposed east of the boat launch. No new structures or impervious surfaces are proposed.
- A proposed larger and deeper boat basin than originally excavated in 1972 will result in a long-term benefit by prolonging the need to conduct future maintenance dredging.
- No vegetation will be removed as part of the proposal. Potential, temporary impacts to benthic resources (sediment from the river bottom) will be offset through the establishment of native vegetation on City shoreline property upstream of the boat launch. Native plantings are recommended by NMFS and are consistent with the City's shoreline policies.
- Proposed maintenance dredging will increase year-round public accessibility to the Columbia River for recreational boaters and fishermen.
- The proposal will increase the safety and efficiency of a public amenity that provides recreational opportunities along the Columbia River.
- There are no other elements deemed applicable to this project.

24 POLICY:

Proposed maintenance dredging will occur at an existing boat launch that has been in place for thirty years. The boat launch is located adjacent to concrete berths and shipways proposed by the Columbia Business Center to be dredged over the next ten years. No new development or uses are proposed. Maintenance dredging within a proposed larger and deeper boat basin is necessary to prolong the need for ongoing dredging.

47 POLICY:

Maintenance dredging is proposed to occur between November 1 and February 28 when juvenile salmonids are least likely to be present in the project area. Additionally, actual in-water work is not expected to require more than two weeks, thereby minimizing the potential for adverse impacts to aquatic species and other natural resources.

82 POLICY: Improvements are proposed to an existing public boat launch that is located in a relatively wide section of the Columbia River. The facility does not interfere with navigation in the

river. The proposal will positively affect the public's use of the shoreline by increasing the safety of the public facility.

249 REGULATION:

The existing Marine Park boat launch does not interfere with the use of navigable waters. Due to accumulated sediments in the basin, the boat launch is currently hazardous to boaters at low water. The purpose of the proposal is to restore the boat basin and prolong the need for future dredging. Two damaged steel pilings require replacement to improve the operating conditions of the boat launch.

83 POLICY:

The existing boat launch does not interfere with the basic geohydraulic processes of the river. The floating wooden docks rise and fall with the water. The existing 15 pilings below the OHWM allow for the river currents to flow through. No new structures or materials are proposed for the facility.

260 REGULATION:

Two damaged steel pilings will be replaced with the same structurally sound material. No curing will be required.

261 REGULATION:

The two new steel pilings proposed to replace existing damaged pilings will not be coated or treated with chemicals. No over water applications will be required.

Conclusion: This adequately addresses the applicable Policies and Regulations of the City of Vancouver *Shoreline Management Master Program*.

20.56.200 ESTABLISHMENT OF BOUNDARIES. *See Shoreline Management Master Program (Ord. M-3231). The provisions of the Shoreline Management Master Program together with the map entitled "Shoreline Environment Designations" shall function as the Shoreline Combining District. (Ord. M-3282 ' 6, 1997)*

Finding: Based on the information submitted by the applicant and a site visit, the project is located within Shoreline Jurisdiction. The upland portion of the site is located in the Upland Urban Conservancy Environment and the area waterward of the upland area is within the Aquatic Environment. The project only involves dredging; therefore, only the regulations pertaining to the Aquatic Environment will apply.

Conclusion: The proposal is subject to the provisions of the City's Shoreline Management Master Plan; specifically, those that relate to the Aquatic Environment.

20.56.300 REGULATION OF USES. *See Shoreline Management Master Program (Ord. M-3231). (Ord. M-3282 & 7, 1997)*

Finding: The project calls for dredging the basin of the Marine Park Boat Launch facility. Specifically, the river will be dredged to a depth of -5 feet Columbia River Datum (CRD). The original dredging of the basin was to a depth of -1.5 feet (CRD) in 1971 and maintenance dredging to the -1.5 feet CRD was performed in 1990 and again in 1996.

The Table of Uses in the Vancouver *Shoreline Management Master Program* indicates at page 7-3 that docks, floats, mooring buoys, and launch ramps require a Shoreline Conditional Use Permit. The SMMP at page 7-5 indicates that dredging requires a Shoreline Conditional Use Permit.

The State of Washington has identified specific review criteria to be used for reviewing Shoreline Conditional Use Permits. These criteria are outlined in Section 173-27-160 of the Washington Administrative Code (WAC). According to this section of the WAC, conditional shoreline uses may be permitted if they meet criteria noted in the Staff Report.

Since the applicant meets said criteria, the proposed dredging is allowed by conditional use permit. The applicant has adequately addressed the criteria of 173-27-160, with the exception of Criterion 1, which is addressed in the Staff Report in the section on Policies and Regulations of the Shoreline Management Master Plan.

20.56.400 SPECIAL STANDARDS. *See Shoreline Management Master Program (Ord. M-3231). (Ord. M-3282 & 8, 1997)*

Finding: Chapter 8 of the Vancouver *Shoreline Management Master Program* contains the development standards relating to proposals within shoreline jurisdiction. The table on page 8-6 indicates that dredging must comply with the provisions of the text of the Master Plan, which includes the Policies and Regulations. The applicant has demonstrated in the previous portions of this report that the proposal complies with those Policies and Regulations.

On page 8-6 are listed the special development standards for piers, docks, floats, and buoys. Again, the table indicates that the applicant must address the text and again, the applicant has addressed the germane policies and regulations.

Conclusion: The applicant has demonstrated that the special development standards of the Vancouver *Shoreline Management Master Program* have been met.

20.60.100 Shoreline Enhancement Overlay District

The application is for the continuation of an existing use. It is a water dependent use and a recreational use. As such the application meets the intent of the Shoreline Overlay Enhancement District.

20.99 Archaeological Resource Preservation

An archaeological predetermination report was completed on the site. That report was forwarded to the City's contract archaeologist. The contract archaeologist found that the conclusions of the predetermination report were adequate and accepted the report. No further action is required because the application meets the requirements of 20.99.

Title 21 State Environmental Policy Act (SEPA)

Title 21 of the Vancouver Municipal Code establishes procedures and policies for implementing the State Environmental Policy Act. In order to be approved, the proposal must meet the requirements of Title 21, SEPA Procedures and Provisions. An Addendum to the 1990 and 1995 SEPA DNS for similar work on this site was issued on July 31, 2002. Refer to Exhibit 8.

As indicated in the Staff Report, to offset the temporary loss of benthic resources at the boat launch site, the City proposes to improve the riparian habitat in the vicinity of the dredging. The concept is to plant native trees in the riparian zone east or upstream of the boat launch on City property. The mitigation area will remain in perpetuity on the City riverfront property. Increasing the amount of vegetation adjacent to the river will enhance the supply of organic matter consumed by many benthic invertebrates. Details of the mitigation concept and plan will be negotiated between the Public Works Department and the NMFS and incorporated into the dredging permit issued by the Corps.

DECISION & RECOMMENDATION

The proposed development is permitted through approval of a Shoreline Conditional Use Permit. Based upon the findings and conclusions herein, the criteria for approval have been satisfactorily met, or shall be met with the conditions of approval, and no significant adverse impacts have been identified. The request will not be significantly detrimental to the health, safety, or general welfare of the residents or land within the neighborhood or the City. The Examiner hereby **APPROVES** and **RECOMMENDS** to the Department of Ecology **Shoreline Conditional Use Permit approval with the condition indicated below**. Be advised that this approval does not grant the right to permits, but only determines that the site can meet the requirements of the applicable ordinances, as described in this report.

CONDITION OF APPROVAL

- The applicant shall develop the details of the mitigation concept and plan through negotiation between the Public Works Department and the NMFS and incorporate it into the dredging permit issued by the Corps.

Dated this 12th day of September 2002

J. Richard Forester
Vancouver Hearing Examiner

NOTE: *Only the decision and the condition of approval are binding on the applicant as a result of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. They may be requirements of local, state, or federal law, or requirements which reflect the intent of the applicant, the city staff, or the Examiner, but they are not binding on the applicant as a result of the final order unless included as a condition.*

APPEAL: Decisions of the Hearings Examiner are appealable to the City Council within 10 working days after the Hearings Examiner decision. Appeals must be made in writing to the Manager of Development Review Services and must contain the following information:

- A. The case number(s) designated by the City and the name of the applicant;
- B. The name and signature of each petitioner and a statement showing that each petitioner is entitled to file the appeal under this Chapter. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative for all contact with the Director. All contact with the Director regarding the petition, including notice, shall be with this contact representative;
- C. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and
- D. The appeal fee adopted by the City Council (\$2,000.00); provided, the fee shall be refunded if the appellant files with the Director at least fifteen (15) calendar days before the appeal hearing a written statement withdrawing the appeal.

Submit the appeal request and fee to the address below:

Manager
Development Review Services
City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995

In the absence of a valid appeal within the timelines specified above, the Hearings Examiner's decision shall become final and conclusive.