

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

Regarding an application by Clark County Mitigation ) **FINAL ORDER**  
Partners for permits needed to establish a wetland ) **PRJ2008-00212<sup>1</sup>**  
mitigation bank on a 153.86-acre site at 3210 NW )  
Lower River Road in the City of Vancouver, Washington) **(Wetland Mitigation Bank)**

**A. SUMMARY**

1. Victor Woodward, on behalf of Clark County Mitigation Partners (the “applicant”), requests approval of a shoreline substantial development and shoreline conditional use permits to establish a wetland mitigation bank on the 153.86-acre Port Terminal 6 site, located at 3210 NW Lower River Road; also known as tax assessor’s parcel no. 152370-000 (the “site”). The site is zoned GW (Vancouver Lake Greenway). Abutting properties to the north and west are zoned AG/WL (Agriculture-Wildlife – Clark County zoning). Properties to the east are zoned IL (Light Industrial). Properties to the south, across NW Lower River Road, are zoned IH (Heavy Industrial). The bank proposes to generate wetland mitigation credits that will be available for use to applicants with permitted, unavoidable adverse impacts to wetlands within an approved service area in compliance with the federal Clean Water Act and applicable state and local regulations.

a. The wetland mitigation bank design includes creation of 25.5 acres of new wetland, enhancement of approximately 87.71 acres of existing wetland and 40.65 acres of associated active flood plain upland. The site will be protected in perpetuity by a conservation easement and maintained in perpetuity by a long-term steward funded with a portion of credit sales.

b. The goal of the wetland mitigation bank is to restore a mosaic of forested, shrub and emergent wetland area and associated upland forest. The mitigation bank will preserve and improve the wildlife functions of the site such as waterfowl usage of the wetlands, songbird use of the shrub areas and heron use of large cottonwoods for a rookery.

c. The active flood plain area, which is currently dominated by non-native pasture grasses, will be planted to become active flood plain forest and shrub area interspersed with existing wetland. Newly created wetlands will be established by grading and planting to a willow-dominated scrub-shrub community transitioning from flood plain forest to aquatic bed wetlands.

---

<sup>1</sup> This application also includes Case files CUP2008-00005 and SHL2008-00004.

2. Hearing Examiner Joe Turner (the "examiner ") conducted a public hearing to receive testimony and evidence about this application. City staff recommended approval of the application, subject to conditions of approval. See the Staff Report and Recommendation to the Hearing Examiner dated May 24, 2010 (the "Staff Report"). Representatives of the applicant and the property owner testified in support of the application and accepted the findings and conditions in the Staff Report without objections. Other than public service providers and agencies, no one else testified orally or in writing.

3. Based on the findings provided or incorporated herein, the examiner concludes that the applicant sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Vancouver Municipal Code (the "VMC"), provided the applicant complies with conditions of approval recommended by City staff or warranted by the facts and law to ensure the proposed use does comply in fact with those standards. Therefore the examiner approves the application, subject to the conditions at the end of this final order.

### **B. HEARING AND RECORD HIGHLIGHTS**

1. The examiner received testimony at the public hearing about this application on June 3, 2010. All exhibits and records of testimony are filed at the City of Vancouver. The examiner announced at the beginning of the hearing the rights of persons with an interest in the matter, including the right to request that the examiner continue the hearing or hold open the public record, the duty of those persons to testify and to raise all issues to preserve appeal rights and the manner in which the hearing will be conducted. The examiner disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City planner Jon Wagner summarized the Staff Report and the applicable standards, described the proposed development on the subject property and showed photos of the site. He noted that this application is the first of its kind in the state.

3. Victor Woodward, a principal with Clark County Mitigation Partners, testified in support of the application. He accepted the findings and conditions in the Staff Report without objections.

4. Patty Boyden testified on behalf of the Port of Vancouver, the owner of the site. She testified that the Port supports the application. She noted that approval of the mitigation bank will not alter the requirement that developers avoid and minimize impacts to wetlands on development sites. The mitigation bank will provide a mitigation option for unavoidable wetland impacts.

5. The examiner closed the record at the end of the hearing and announced his intention to approve the applications subject to the conditions in the Staff Report.

### **C. DISCUSSION**

Based on the findings and discussion provided or incorporated herein, the examiner concludes that File Nos. PRJ2008-00212, CUP2008-00005 and SHL2008-00004 (Wetland Mitigation Bank) should be approved, because the application does or can comply with applicable standards of the Vancouver Municipal Code (the “VMC”), provided it is subject to conditions that ensure timely compliance in fact with the VMC and relevant Comprehensive Plan Policies incorporated by reference in the Staff Report. The proposed Shoreline Conditional Use Permit must be reviewed and approved by the proper state and federal agencies, in this instance, the Washington State Department of Ecology.

## **D. ORDER**

The Hearing Examiner APPROVES File No. PRJ2008-00212, CUP2008-00005 and SHL2008-00004 Shoreline Substantial Development Permit (Wetland Mitigation Bank) subject to the following conditions of approval, and recommends APPROVAL of File No. SHL2008-00004 Shoreline Conditional Use Permit to the Department of Ecology subject to the following conditions of approval:

### **CONDITIONS OF APPROVAL**

#### **Required on Final Plan**

1. Submit a final plan application along with four (4) full size plan sets and one reduced 8.5 x 11 copy. Site plan sets include landscape/tree plan and grading/tree protection/erosion control plan. Applications can be found under Building, Planning and Environment on the city of Vancouver website, [www.cityofvancouver.us](http://www.cityofvancouver.us)

#### **Prior to Civil Plan Approval**

2. Show the construction entrance on the full size plan set and meet the requirements of standard plan E-1.05 as well as the sight distance and vision clearance requirements per city standard plans T04-03 and T04-04.
3. Submit a final erosion control plan for review and approval. Include BMPs to insure sediment does not enter adjacent wetlands, waterways or roadways.
4. Engage and designate (on civil plans) a registered geo-tech engineer who will act as Geo-tech Engineer of Record.

#### **Prior to Issuance of any Building/Grading /Development Permits**

5. Ensure all proposed excavations and fills comply with 2006 IBC.
6. Pay all applicable fees to the city of Vancouver.

#### **Prior to Construction**

7. Ensure all erosion control measures are in place.

#### **During Construction**

8. Ensure all erosion control measures are in place.

DATED this 8th day of June 2010.

---

Joe Turner, AICP  
City of 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 Hearing Examiner may be appealed to City Council. Any party with standing under Section 20.210.130(B) VMC may submit a written appeal to the planning official containing the items listed below.

1. The case number designated by the city and the name of the applicant;
2. The name and signature of each petitioner or their authorized representative and a statement showing that each petitioner has standing 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 planning official. All contact with the planning official regarding the appeal, including notice, shall be with the contact representative;
3. The specific aspect(s) of the decision or determination being appealed, and the specific reasons why each aspect is in error as a matter of fact or law;
4. A statement demonstrating that the specific issues raised on appeal were raised during the period in which the record was open;
5. The appeal must be received no later than 14 calendar days after written notice of the decision is mailed;
6. The appeal fee is \$1,145.10 as per Chapter 20.180 VMC, Fees. The fee shall be refunded if the appellant requests withdrawal of the appeal in writing at least 14 calendar days before the scheduled appeal hearing date.