



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000  
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February 18, 2014

Grant Osberg  
Anacortes Marina Owners Association  
PO Box 33368  
Seattle, WA 98133

RE: Water Quality Certification Order #10535 for U.S. Army Corps of Engineers  
Public Notice #NWS-2013-752, Anacortes Marina – Replace Breakwater System,  
Open Floating Piers, and Guide Piles Project, in Anacortes, Skagit County,  
Washington

Dear Mr. Osberg:

On September 4, 2013, Anacortes Marina Owners Association submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Anacortes Marina – Replace Breakwater System, Open Floating Piers, and Guide Piles project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale, Section Manager  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

ES:rrp:mrw  
Enclosure



**By certified mail 7011 0470 0003 3720 8568**

cc: Olivia Romano, U.S. Army Corps of Engineers  
Doug Thompson, Washington Department of Fish and Wildlife  
Corey Saxon, Washington Department of Natural Resources  
Jeffrey Layton, Layton & Sell, Inc., P.S.

e-cc: Bob Fritzen – NWRO  
Laura Inouye – HQ  
Loree' Randall – HQ  
Raman Iyer – NWRO  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

**IN THE MATTER OF GRANTING A ) ORDER #10535**  
**WATER QUALITY ) Corps Reference #NWS-2013-752**  
**CERTIFICATION TO ) Anacortes Marina – Replace Breakwater System,**  
**Anacortes Marina Owners Association ) Open Floating Piers and Guide Piles Project;**  
in accordance with 33 U.S.C. 1341 ) Fidalgo Bay, Anacortes, Skagit County,  
(FWPCA § 401), RCW 90.48.120, RCW ) Washington.  
90.48.260 and Chapter 173-201A WAC )

TO: Grant Osberg  
Anacortes Marina Owners Association  
PO Box 33368  
Seattle, WA 98133

On September 4, 2013, Anacortes Marina Owners Association submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on November 1, 2013.

Replacement of the marina structures includes: replacing up to 2,413 linear feet of existing creosote-treated timber pile vertical wall breakwater system, including the removal of 3,000 piles and installation of 375 new piles, replacing the existing floating concrete moorage system for 329 open (uncovered) slips with six main walkways, and replacing up to 480 piles for the six existing floating covered/uncovered slips (Piers A-F) and existing floating wave attenuators, over a 10-year period.

The proposed work consists of:

Breakwater: Replacement of the existing breakwater system would include removal of up to 3,000 creosote-treated timber piles and over 5,000 linear feet of creosote-treated timbers. The new breakwater system would be a cantilever vertical wall system fully embedded into the seabed, consisting of a combination of steel pipe piles and steel sheet piles with a combined length of 2,413 linear feet. Up to 375 pipe piles, varying in diameter from 30 to 48 inches would be installed. Ten 5-foot-wide water circulation openings would be provided between the various wall segments in the new north and south replacement breakwater system.

Floating Piers/Guide Piles: Replacement of the floating piers would include removal and replacement of up to 455 creosote-treated piles for the six floating piers (A-F), consisting of covered and open slips. Removal and replacement of up to 25 timber piles from the existing floating wave attenuators. The new piles would be steel, concrete, or fiberglass. The new open slip moorage floats would consist of foam-filled concrete or plastic pontoons with timber/steel/aluminum connector systems. The new moorage floats would be grated with a

minimum of 60% open space. The new T-head floats for Piers B-F are wave attenuator floats and would not be grated.

The following elements of the marina's existing structures would remain in place: the existing covered moorage floats, walkways, seven gangways for five floating piers (Piers A-E), the mobile boat hoist, fuel dock, three existing floating wave attenuators with combined length of 405 linear feet, and an existing floating boom.

The project is located at 2415 T Avenue, Anacortes, Skagit County, Washington, Fidalgo Bay, Section 19, T. 35 N., R. 2E., WRIA 3.

#### **AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

#### **WATER QUALITY CERTIFICATION CONDITIONS:**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of

surface waters, ground waters or sediments occurring as a result of project construction or operations.

**A. General Conditions:**

- A1. For purposes of this Order, the term "Applicant" shall mean Anacortes Marina Owners Association and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #10535 and Corps Reference #NWS-2013-752.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on September 4, 2013. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 10 permit.
- A6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits,

approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.

- A10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.
- A11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

**B. Water Quality Conditions:**

- B1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i).
- B2. In-Water Construction Water Quality Sampling and Monitoring: A final Water Quality Protection and Monitoring Plan (Plan) shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark of Fidalgo Bay.

The Plan shall include the following minimum requirements:

- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the Plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-210(1)(e)(i), which allows a 150-foot temporary area of mixing for turbidity resulting from disturbance of in-place sediments in Fidalgo Bay. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.
- b. Number of samples: Number and frequency of water quality samples to be taken.
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Detection of exceedances: Water quality standards for turbidity in "Excellent" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the

background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-210(1)(e)(i) is detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.

- f. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
  
- g. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #10535, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
  - i. A description of the nature and cause of exceedance.
  - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
  - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
  - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

**C. Conditions for Construction Activities:**

**Upland Conditions:**

- C1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
  
- C2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.

C3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

**In-Water Conditions:**

C4. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

C5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.

C6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.

C7. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.

C8. During project demolition or construction, a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other materials released into the waters as a result of construction activities. All accumulated debris shall be collected and disposed of upland at an approved disposal site.

C9. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent debris, sawdust, and other materials from entering the water.

C10. During construction, the Applicant shall have a boat available on site at all times to retrieve debris from the water.

C11. All manmade debris that has been deposited below the Ordinary High Water Line (OHWL) within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete rubble, metal debris, and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.

C12. Project activities shall be conducted to minimize siltation of the beach area and bed.

C13. The Applicant shall operate the barge(s) and tug in deep water so as to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.

C14. Barges and other work vessels shall not be allowed to ground-out during construction.

- C15. Tideflat and shallow subtidal vegetation on site and surrounding the project area shall be protected to the maximum extent practicable.
- C16. Anchor chains shall not be allowed to contact the sea bed.

**Piling and Timber Removal Conditions:**

- C17. Approximately 3,480 creosote-treated timber piles and over 5,000 linear feet of creosote-treated breakwater timbers shall be removed from marine waters. Piling shall be removed by vibratory extraction. If piles break during removal and cannot be removed by vibratory extraction, the piling shall be cut 2 feet below the mudline.
- C18. Piles, stubs, breakwater timbers, debris, and all associated excavated sediments shall be contained and prevented from entering waters of the state.
- C19. Piles and breakwater timbers removed from substrate: the pile or timber shall be moved immediately from the water into the barge or onto uplands. The pile or timber shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove adhering material from the pile or timber.
- C20. Work surface on the barge deck or on uplands shall include a containment basin for piles, breakwater timbers, and any sediment removed during pulling of the piling or breakwater timbers. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment.
- C21. The piles, breakwater timbers, and any sediment removed during pulling of the piling or breakwater timbers shall be disposed of at an approved upland disposal site. If piles or timbers are taken to a recycler, the facility shall be properly certified or permitted to reuse or recycle creosote-treated timber piles.

**Pile Driving:**

- C22. The 375 new pilings for the breakwater shall be steel, and 480 new pilings for the floating piers and guide piles shall be steel, concrete, or fiberglass.
- C23. The steel and fiberglass pilings shall be installed using a vibratory hammer whenever possible. An impact hammer may be used to proof pile, if needed.

**Sheet Pile Driving:**

- C24. The steel sheet pile shall be installed using a vibratory hammer whenever possible.

**D. Operational Conditions**

- D1. No portion of the dock or float system shall ground. A minimum space of 6 inches shall be maintained at all times between the bottom of the dock or float and the beach grade.
- D2. Flotation for the structure shall be fully enclosed and contained in order to prevent the breakup or loss of flotation material into the water.

**E. Emergency/Contingency Measures:**

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- E2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- E3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
- E4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
  - a. Cease operations at the location of the violation or spill.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
  - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

**F. Timing Requirements**

- F1. Work below the Ordinary High Water Line (OHWL) shall not occur from February 15 through July 14 of any year for the protection of fish.
- F2. This Order expires 10 years from the date of issuance of the Corps permit.

**G. Reporting and Notification Requirement Conditions**

- G1. The Applicant shall provide to Ecology's 401/CZM Federal Permit Manager a copy of the final Corps permit within 2 weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- G2. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager:
- At least three (3) days prior to the start of construction each season.
  - Within 14 days after completion of construction at the project site each season.
- Notification, referencing Corps Reference #NWS-2013-752, Order #10535 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.
- G3. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is complete.

**YOUR RIGHT TO APPEAL**

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

**ADDRESS AND LOCATION INFORMATION**

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

### CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett  
Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
(425) 649-7129  
[rebekah.padgett@ecy.wa.gov](mailto:rebekah.padgett@ecy.wa.gov)

### MORE INFORMATION

**Pollution Control Hearings Board Website**

[www.eho.wa.gov/Boards\\_PCHB.aspx](http://www.eho.wa.gov/Boards_PCHB.aspx)

**Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

**Chapter 371-08 WAC – Practice And Procedure**

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

**Chapter 90.48 RCW – Water Pollution Control**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

**Chapter 173-204 WAC – Sediment Management Standards**

[www.ecy.wa.gov/biblio/wac173204.html](http://www.ecy.wa.gov/biblio/wac173204.html)

**Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173200.html](http://www.ecy.wa.gov/biblio/wac173200.html)

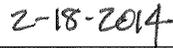
**Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of  
Washington**

[www.ecy.wa.gov/biblio/wac173201A.html](http://www.ecy.wa.gov/biblio/wac173201A.html)

**SIGNATURE**



\_\_\_\_\_  
Erik Stockdale, Section Manager  
Shorelands and Environmental Assistance Program  
Northwest Regional Office



\_\_\_\_\_  
[Date]

**ATTACHMENT A**

**ANACORTES MARINA OWNERS ASSOCIATION  
ANACORTES MARINA – REPLACE BREAKWATER SYSTEM,  
OPEN FLOATING PIERS AND GUIDE PILES PROJECT  
Water Quality Certification Order #10535**

**Statement of Understanding of  
Water Quality Certification Conditions**

I have read and understand the conditions of Order #10535 Section 401 Water Quality Certification for the Anacortes Marina Owners Association Anacortes Marina – Replace Breakwater System, Open Floating Piers and Guide Piles Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company