



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

November 8, 2006

REGISTERED MAIL
RB 670 438 038 US

Glacier Northwest, Inc.
Attn: Pete Stoltz
P.O. Box 1730
Seattle, WA 98111

RE: Water Quality Certification Order #3933 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200500487 to Perform Bank Stabilization of Slip 2 in the City of Seattle, Duwamish Waterway, King County, Washington

Dear Mr. Stoltz:

On June 23, 2005, Glacier Northwest, Inc., submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act (CWA) for the proposed Slip 2 Bank Stabilization project. A JARPA addendum letter for the project was submitted to Ecology on November 21, 2005. On June 19, 2006, a request to withdraw and re-apply for a 401 Certification was submitted in order to extend the review period for this project, with no additional changes to the JARPA. The project proposes to repair and stabilize the eroding bank within barge Slip 2 at the site as well as altering stormwater flow from an adjacent site in order to control flow over the top of the bank, minimizing infiltration and future bank erosion. The Corps issued a joint public notice for an individual Section 404 and Section 10 Permit on June 16, 2005, for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA, JARPA addendum letter, and the June 16, 2005, 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.

On June 23, 2005, Glacier Northwest, Inc., submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). On November 30, 2005, Ecology and Glacier Northwest, Inc., jointly requested a CZM extension from the Corps. Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with Glacier Northwest, Inc.'s determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon Glacier Northwest, Inc.'s compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



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This letter also serves as the State response to the Corps of Engineers' June 16, 2005, Public Notice.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129 or rp461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja

Enclosure

cc: Susan Glenn, U.S. Army Corps of Engineers
Matthew Boyle, Grette Associates, LLC
Laura Arber, Washington Department of Fish and Wildlife

e-cc: Penny Keys – HQ
Loree' Randall – HQ

IN THE MATTER OF GRANTING A) ORDER #3933
WATER QUALITY) Corps Reference No. 200500487
CERTIFICATION TO) Repair and stabilize bank, Duwamish Waterway,
Glacier Northwest, Inc.) located in King County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Glacier Northwest Inc.
Attn: Pete Stoltz
P.O. Box 1730
Seattle, WA 98111

On June 23, 2005, Glacier Northwest, Inc. submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A JARPA addendum letter was submitted to Ecology on November 21, 2005. On June 19, 2006, a request to withdraw and re-apply for a 401 Certification was submitted in order to extend the review period for the project, with no additional changes to the JARPA. A joint public notice was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on June 16, 2005.

The proposed project entails excavation of 300 cubic yards of material and placement of 7,600 cubic yards of riprap along 900 feet (0.8 acre) of the riverbank below mean higher high water (MHHW). Work above MHHW will include 200 cubic yards of grading and placement of 2,200 cubic yards of riprap and ecology blocks. Together, these actions are to repair and stabilize the eroding bank within barge Slip 2. Seams in the concrete drive above Slip 2 will be sealed and the discharge path of stormwater from the adjacent property into Slip 2 will also be altered to allow for controlled flow over the top of the bank, minimizing infiltration and future bank erosion. In addition, the upper slope of Slip 2 will be planted with native vegetation. The project is located at 5975 East Marginal Way S., Seattle, Duwamish Waterway, King County, Washington, Section 19/30, Township 24 North, Range-4 East, WRIA #9.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, 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, 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 not violate 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 Glacier Northwest, Inc., 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 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #3933 and Corps Reference #200500487.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 23, 2005, and the JARPA addendum received by Ecology on November 21, 2005. 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 Corps does not issue Section 404 and Section 10 permits.
- A6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
- A7. 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.

- A8. 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.
- A9. 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.
- A10. 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.
- A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

B. Project Mitigation:

- B1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:
- October 25, 2006, letter from Matthew Boyle, Grette Associates, to Rebekah Padgett, Ecology, *Re: Glacier Northwest Slip 2 Bank Stabilization (Corps reference 200500487) - Plantings*, with accompanying 2 maps entitled, "Proposed Planting Areas" dated September 2005.
 - September 13, 2005, JARPA Addendum and Planting Plan with map sheets 1-2 dated September 2005.
- B2. In addition to conditions in the above-referenced documents, the following requirements shall be conditions of this Order:
- a. Timing: Construction and installation of compensatory mitigation must occur before or at the same time as project impacts on aquatic resources.

- b. Baseline Monitoring Report: A baseline monitoring report documenting the final design of the mitigation area must be prepared when site construction and planting are completed. The report shall include the following:
- i. Vicinity map showing site access.
 - ii. Drawings that clearly identify in plan view the location and square footage of the planted area.
 - iii. The installed planting scheme showing approximate locations of plants and the time of planting.
 - iv. Photographs of the area taken from permanent reference points.
 - v. Locations of photopoints, and sampling sites.
 - vi. A description of any changes to the mitigation plan that occurred during construction.

A copy of the baseline monitoring report shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing construction, and in no case later than May 31, 2007.

- c. Field Supervision: Site preparation shall be inspected and plant installation shall be field-supervised by a qualified consultant to ensure that plants are healthy, meet specifications and are appropriately placed.
- d. Monitoring: Monitoring shall take place four (4) times over a period of five (5) years, with monitoring performed in years 1, 2, 3, and 5. **Copies of all monitoring reports shall be submitted to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452.** Reports shall display the Order #3933.
- e. Performance Standards: In addition to the performance standard in the October 25, 2006, planting letter, invasive non-native species shall have a maximum combined cover of less than 15 percent for all non-native species (including Himalayan and evergreen blackberry, Scots broom, etc.) throughout the monitoring period.
- f. Maintenance: The Applicant is responsible for maintenance and protection of the native vegetation planting area both throughout and after the 5-year monitoring period.

C. In-Water Construction Water Quality Conditions:

- C1. The Duwamish Waterway is classified as a Class B and the criteria of that class apply except as specifically modified by this Order. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(3) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicant

from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.

- C2. Turbidity shall be visually assessed and recorded at a minimum of every four (4) hours during periods of active in-water work. Monitoring points shall be 100 feet upstream (representative background), 300 feet downstream, and at the discharge point. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable. Visible project-related turbidity at 300 feet below the discharge point is considered to be an exceedance of the standard. If an exceedance of 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or there is more than a twenty (20) percent increase in turbidity when the background turbidity is more than 50 NTU, occurs at 300 feet below the project site, modify the activity causing the problem and continue to monitor every four (4) hours. If exceedances occur with two (2) consecutive measurements (four (4) hours apart), stop the activity causing the turbidity until the problem is resolved.
- C3. Project activities shall be conducted to minimize siltation of the river bed.

D. Stormwater Conditions:

- D1. Construction stormwater, sediment, and erosion control 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.

E. Construction Activity Conditions:

- E1. Work shall be accomplished per the *Glacier Northwest Slip 2 Stabilization Biological Evaluation*, dated April 18, 2005, prepared by Grette Associates Environmental Consultants, and the *Biological Evaluation Addendum, GNW Slip 2 Bank Stabilization 200500487*, dated August 1, 2005, by Grette Associates; except as modified by this Order.
- E2. 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.
- E3. 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.
- E4. BMPs shall be developed and implemented to ensure that no toxic or hazardous material enters the water during work.
- E5. 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.

- E6. Construction activities shall be conducted in the dry whenever possible, and excavation and material placement shall be completed in a controlled manner.
- E7. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.
- E8. If barges are required, the vessel operation shall be restricted to tidal elevations adequate to prevent grounding of the barge.

F. Emergency/Contingency Measures:

- F1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project. This Plan shall be submitted to Ecology for review 30 days prior to beginning construction.
- F2. 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.
- F3. 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.
- F4. 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.

G. Timing Requirements

- G1. This Order is valid until all compliance requirements in this document have been met.
- G2. In-water work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

H. Reporting and Notification Requirement Conditions

- H1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #200500487, Order #3933, can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

I. Appeal Process

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:
Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated November 8, 2006 at Bellevue, Washington.



Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**GLACIER NORTHWEST, INC.
SLIP 2 BANK STABILIZATION PROJECT
Water Quality Certification Order #3933**

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

I have read and understand the conditions of Order #3933 Section 401 Water Quality Certification for the Glacier Northwest, Inc., Slip 2 Bank Stabilization Project. I have also read and understand all permits, plans, documents, and approvals associated with the Glacier Northwest, Inc., Slip 2 Bank Stabilization Project referenced in this Order.

Signature

Date

Title

Company