



## REGULATORY AGENCIES HAVE SPOKEN

### Permit conditions and mitigation measures will protect the environment

Regulatory agencies have also made a number of declarations and decisions regarding the project, the conditions in its permits and the additional mitigation measures employed to ensure that Puget Sound, its shorelines, endangered species, their habitat and other features of the environment are protected.

**1. Decision issued July 14, 2008 regarding an administrative appeal of the Hydraulic Project Approval Permit:** After the Washington Department of Fish and Wildlife issued a Hydraulic Project Approval permit for the project, Preserve Our Islands (POI) appealed the issuance of that permit. The permit contained conditions and restrictions to protect fish and habitat, but POI claimed those restrictions were inadequate and wanted more. Administrative Law Judge, Barbara Boivin, held a hearing on April 28, 2008 and heard evidence from POI, Glacier and the Washington Department of Fish and Wildlife relating to the permit. The ALJ approved the permit as issued. Here are some quotes:

- **Initial Order:**

“There is no evidence that the shade created by the structure or the barges and associated equipment, as limited by the mitigation plan, will result in damage or destruction of the limited amount of aquatic plants under the dock or the barges or in the areas where any shadows cast by the structure or the barges are likely.”

p. 5

“Vibratory pile driving waterward of – 2 MLLW, that is, at a horizontal distance of approximately 100 feet away from where any surf (smelt) spawn would be, can take place even if surf smelt spawn is present. This modification is consistent with WAC 220-110-032(1). There is no evidence that vibratory pile driving adversely impacts surf smelt spawning at a horizontal distance of 100 feet.”

p. 9

“Significant mitigation measures are in place to address potential shading impacts from the structure and the barges. There is no

basis for the imposition of additional conditions to address potential impacts of shading on aquatic plant life.”

“14. There is no basis for the imposition of additional conditions to address potential impacts of noise on fish life.”

p. 10

“The regulatory timing limitations proposed by Appellants are not warranted because the fish activities which the regulations are designed to protect are not documented at the site and the potential impacts of shading and noise have been adequately addressed. Therefore no basis to change the conditions included in HPA # 108838-1.”

p. 11

**2. Final Order of Washington Department of Fish and Wildlife, dated November 6, 2008:** POI appealed Judge Boivin’s decision to the Director of Fish and Wildlife. The director affirmed the judge’s order and ordered that the HPA permit should issue as written. Here are some quotes:

▪ **Final Order Affirming Initial Order:**

“There is no evidence in the record that adult surf smelt would be harmed by vibratory pile driving in the project area below -2.0 ft. MLLW.”

p. 5

“I agree with ALJ Boivin that insufficient evidence was presented to make any findings with respect to the impact of noise. I cannot conclude, therefore, that noise from Glacier’s project would harm fish life.”

p. 9

“There is no evidence that vibratory pile driving waterward of the -2.0 MLLW will harm surf smelt eggs and spawning fish on the beach.”

...

“There is no evidence that the shade created by the structure or the barges and associated equipment, as limited by the mitigation, will result in damage or destruction of the limited amount of aquatic plants under the dock or the barges in the areas where any shadows cast by the structure or the barges are likely.”

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**3. Declaration of David Palazzi, dated December 9, 2008:** After DNR issued the lease to Glacier, POI appealed that decision to King County Superior Court and sought an injunction to stop construction, which was denied. DNR filed David Palazzi's declaration in opposition to that request for an injunction. Mr. Palazzi is a DNR staff person who was involved with the development and management of the Maury Island Environmental Aquatic Reserve and with the review of Glacier's lease application. Here are some quotes:

▪ **Declaration of David Palazzi:**

"I am an Environmental Planner with the State of Washington, Department of Natural Resources, and am currently the Planning Unit Supervisor for the Aquatics Land Division, Program Development Section of the Washington State Department of Natural Resources. I have a masters of science degree in Marine Resource Management from Oregon State University."

p. 1:23-25; p. 2:1-2

"As a DNR employee, I was directly involved with the development and management of the Maury Island Environmental Aquatic Reserve. I am familiar with the background of the Northwest Aggregate lease through my involvement in the management plan."

p. 2:11-14

"In 2004, I assisted with preparation of the Maury Island Environmental Aquatic Reserve Final Management Plan ("Management Plan"). This included evaluating the proposed Maury Island area for aquatic reserve status, conducting a technical review by ad-hoc review committee, providing recommendations to the Commissioner of Public Lands, developing elements of the management plan, integrating public comments, conducting numerous public individual meetings regarding the plan development, and conducting SEPA review of the management plan."

p. 3

"All the permits that looked at shade impacts all indicated that the new structure has less impact on the eelgrass, which is why we ask for a limit on shading to the euphotic zone."

...

“All the documents support the conclusion that new structure results in less impacts of shading to eelgrass than caused by the existing dock.”

p. 7:16-18; 22-23

**4. Declaration of Lynne M. Barre, dated December 31, 2008:**

Lynne Barre submitted this declaration in federal court in response to POI’s request for injunction to stop construction. POI withdrew that request after Lynne Barre’s declaration was filed and after the court issued a written decision explaining its denial of POI’s request for a temporary restraining order to halt construction. Here are some quotes:

▪ **Declaration of Lynne M. Barre:**

“I am currently a Marine Mammal Specialist for the United States National Marine Fisheries Service (NMFS).”

...

“I have worked for NMFS for eight years and have been in NMFS’ Northwest Regional office for over five years. While in the Northwest Region, I have been the lead for the killer whale program, including the listing of Southern Resident Killer Whales (SRKW) under the Endangered Species Act (ESA), designation of critical habitat, and development of NMFS’ 2008 ‘Recovery Plan for Southern Resident Killer Whales (Orcinus orca).”

p. 2:2-3; 5-10

“As Plaintiffs’ allege, SRKW may be silent for significant periods of time, and therefore undetectable by hydrophone. However, this does not render the Monitoring Plan inadequate. Visual observation and hydroacoustic monitoring are intended to complement each other. When these two monitoring methods are used together, it is highly unlikely that SRKW will enter the project vicinity undetected.”

p. 5:12-16