



City of Kenmore, Washington

June 6, 2024

Pete Stoltz
CalPortland
3450 S. 344th Way Suite 201
Federal Way, WA 98001
PStoltz@calportland.com

**RE: Kenmore File No. SSDX23-0025 (PRJ23-0025);
Glacier Northwest, Inc. Shoreline & Critical Area Ordinance Exemption**

Mr. Stoltz,

The City of Kenmore Development Services Department (“City”) has reviewed your application for an exemption from a Shoreline Substantial Development Permit (SSDP), critical areas regulations described in Section 18.55 of the Kenmore Municipal Code (KMC), and the State Environmental Policy Act (SEPA). After reviewing the applicable shoreline requirements of Title 16 of the Kenmore Municipal Code (KMC), Washington Administrative Code (WAC), the Revised Code of Washington (RCW), and KMC 18.55 – critical areas ordinance, the City has determined that the Glacier NW dredging proposal qualifies for a Shoreline Substantial Development Permit Exemption and critical areas exemption (file no. SSDX23-0025). However, the proposal is **not** exempt from SEPA. A separate SEPA Mitigated Determination of Non-Significance (MDNS) has been issued concurrently with the exemption approval (file no. SEPA23-0027).

PROJECT INFORMATION

Property Owner:	Glacier Northwest, Inc. (Glacier NW) 2025 E Financial Way Glendora, CA 91741
Location (Subject Property):	6423 / 6431 NE 175 th Street Kenmore, WA 98028 (Parcel No. 112604-9020)
Critical Areas mapped:	Seismic Hazard, Wetlands, Fish and Wildlife Habitats of Importance, Lake Washington
Shoreline:	Lake Washington
Shoreline Designation:	Downtown Waterfront (DW) and Aquatic (A)
Related Permits:	SEPA23-0027
Other Approvals or Permits Anticipated¹:	<ul style="list-style-type: none">U.S. Army Corps of Engineers (USACE) Nationwide Permit 35 for Maintenance Dredging of Existing Basins

¹ This is not an exhaustive list; additional permits may be required by other agencies. For example, the Northshore Utility District may require a permit to discharge to the sewer system. The applicant is responsible, apart from the City, for obtaining all required permits and approvals.

- National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) Endangered Species Act (ESA) Section 7 Concurrence
 - National Historic Preservation Act Section 106 Concurrence
 - Washington State Department of Ecology (Ecology): Clean Water Act Section 401 Water Quality Certification (WQC)
 - Ecology: Coastal Zone Management Act Consistency Determination
 - Washington Department of Fish and Wildlife (WDFW): Hydraulic Project Approval (HPA)
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BACKGROUND

Glacier Northwest, Inc. (Glacier), a CalPortland Company, is a ready-mix plant and aggregate yard located at the north end of Lake Washington in Kenmore. Glacier imports materials (sand and gravel) by barge via Lake Washington and the berthing channel located adjacent to and south of the ready-mix plant (see map).



Loaded barges typically draft at approximately 15 feet of water. Water levels in Lake Washington vary by approximately 2 feet, ranging from approximately +20 feet in winter to approximately +22 feet in summer (USACE Kenmore Datum). Over time, during the offloading of barges, sand and gravel material spillage accumulated in the berthing channel, making it difficult for vessels and barges to safely access the terminal. As a result, barges are “light-loaded,” to accommodate depths, reducing overall efficiency. Removing the sand and gravel (dredging) is necessary to maintain the channel for access and normal operations.

HISTORY

Maintenance dredging within the berthing channel has been performed periodically over the last 20+ years. In the late 1990s, a toe protection feature was installed to protect the adjacent bulkhead. The toe protection armoring is composed of quarry spall material that extends up to

+4.47 feet (USACE Kenmore Datum). In 2004, dredging to the toe protection feature at +4.47 feet was permitted in the berthing channel as maintenance. Between 2004 and 2010, material spillage from the Glacier NW hopper and conveyor used to offload barges accumulated in the berthing channel. In 2010, the hopper and conveyor were replaced with a system designed to minimize material spillage.

In 2020 and 2021, the US Army Corps of Engineers (USACE) conducted maintenance dredging of the Kenmore navigation channel located south of the berthing channel. This made it possible for fully loaded barges to enter the navigation channel. However, these fully loaded barges cannot enter the berthing channel since it too requires dredging. Now that the navigation channel has been maintained, Glacier is proposing to restore its berthing area to its previously maintained depth of +4.47 feet.

PROJECT PROPOSAL

The proposed dredging will provide safe passage for vessel ingress and egress by removing approximately 800 cubic yards of sand, gravel, and small amounts of sediment material within the berth area. Dredging will target a depth of +4.47 feet (USACE Kenmore Datum) to the top of the existing toe protection surface and is considered maintenance necessary for normal operations. The accumulated sand and gravel proposed for removal is clean construction aggregate that was released during offloading of barges at the facility (spillage); this material was deposited after maintenance dredging was last completed in 2004 and prior to 2010. In 2010, the hopper and conveyor used to offload barges were replaced with a system designed to minimize material spillage. Material dredged from the berth will be transferred to a bunker surrounded by a sand berm to filter water that drains from the dredged material onto the upland property owned by Glacier. Water will be collected, treated, and discharged to the sanitary sewer system. The dredged material, once drained, will be transported by truck and disposed of at an appropriate upland disposal site, either with Waste Management in Seattle or a similar permitted disposal facility. The dredged material will not be disposed of on-site or reused.

The public has expressed concern that sediment containing legacy contaminants could potentially be present in the vicinity of the dredge prism. To address this concern, waterward of the existing toe protection surface, dredging will occur to +3.5 feet. A grab sample of the newly exposed sediment surface will be collected for analysis and the area will be backfilled with a clean sand layer to a minimum thickness of 1 foot (totaling 215 cubic yards) to prevent potential contaminants that may be present in the newly exposed sediment from remaining exposed to the water column.

The project includes a Water Quality monitoring Plan (WQMP) prepared in compliance with Chapter 173-201A WAC. The WQMP is designed to provide constant visual water quality monitoring throughout the duration of construction.

PUBLIC ENGAGEMENT

The project has included public involvement beyond what is required by the KMC. Some of the public engagement methods included:

- Notification via the USPS mail (paper)
- Notification via the Seattle Times newspaper (paper and online)
- Notification via the SEPA registrar (online)

- Continuous online updates via the city website
- In-person meetings with city staff
- Online public meeting with the opportunity to discuss the project with the applicant, City, Ecology, USACE, and WDFW
- Posted in Kenmore’s Top 4 weekly e-newsletter (email)

The city recognizes that Kenmore residents care about the environment and that Lake Washington is a community asset. During the review process, special attention was given to public comments and efforts were made to increase public awareness and project transparency. Public comments were reviewed by staff, provided to the applicant, posted online, discussed with experts and various agencies, discussed in an online public meeting, and responded to directly.

STATE ENVIRONMENTAL POLICY ACT (SEPA)

The City determined that the proposal does not meet the SEPA exemption criteria of WAC 193-11-800. Therefore, a SEPA threshold determination is required pursuant to WAC 197-11-310(1). A SEPA Environmental Checklist (file no. SEPA23-0027) was prepared by the applicant and filed with the application (Attachment 9). Pursuant to KMC 19.25.060, a notice of application was provided for land use applications requiring Type 1 decisions subject to SEPA.

- The SEPA 21-day comment period was in effect from 6/10/2023 to 7/3/2023 (it was extended by 2 days so the final day of the notice period would fall on a day when City Hall was open – making the comment period 23 days instead 21 days). The notice was published in the Seattle Times newspaper, posted on the city’s website, mailed to property owners within 1,000 feet of the site, emailed to SEPA agencies, uploaded to the SEPA registrar, and posted on a 4-foot by 4-foot (4’x4’) public notice board on site in accordance with KMC 19.25 and KMC 19.35 (Attachments 11-14).
- During the public comment period (6/10/2023 – 7/3/2023), the city received 4 comments. The table below summarizes comments received (Attachment 7).

#	Party of Interest	Comment Summarized ²
1	Jim Meyer 5934 NE 201 st Street Kenmore, WA 98028 Oda1959@comcast.net	Concerned about disturbance of contaminants in lakebed, which may have been disturbed and deposited in the gravel to be dredged. Requests testing of the materials to be dredged and the lakebed adjacent. Requests appropriate disposal of dredged material, and BMPs for dredging.
	Response: The City reviewed the comment, responded via e-mail, and met with the party of interest to discuss his concerns. Dredged material will be disposed of at an approved upland facility, BMPs will be utilized for dredging, and sediment testing is required as a condition of the SEPA MDNS.	
2	Elizabeth Mooney Elizabeth.mooney@comcast.net	Requests testing of the lakebed below the dredge prism, and requests that testing results are made

² This table is intended to summarize comments received during the combined NOA and SEPA public comment period. This summary is not intended to replace public comments. A copy of each comment is provided as an attachment.

		public. Requests that the City reach out to other agencies prior to issuing SEPA.
	Response: The City reviewed the comment, responded via e-mail, and met with the party of interest to discuss her concerns. Sediment testing will be required as a condition of the SEPA MDNS with results made available to the public. The City met with Ecology, WDFW, and USACE prior to issuing the SEPA MDNS.	
3	Janet Hays happyhaze@msn.com	Concerned there is not enough information on contamination to issue the SEPA MDNS. Requests comprehensive testing of the north side of Lake Washington in the vicinity of the project. Concern for safety of the beach at Log Boom Park.
	Response: The City reviewed the comment, responded via e-mail, and met with the party of interest in-person to discuss her concerns. Dredged material will be disposed of at an approved upland facility, BMPs will be utilized for dredging, and sediment testing is required as a condition of the SEPA MDNS.	
4	Richard Honour rhono@precautionarygroup.com	Concerned that the City is not interested in taking action to protect citizens from toxins in the air, soil, sediment, and water.
	Response: The City reviewed and responded via email to the party of interest. The City's response included a description of the process and procedures through which the City makes determinations on proposals, and weighs the various considerations.	

- c. A copy of all public comments was provided to the applicant for their review and response. The applicant responded to public comments in writing and provided a copy of their response to the city (Attachment 8).
- d. The City reviewed and responded to all public comments.
- e. Based on feedback provided by the community, CalPortland hosted a virtual community meeting on Monday, February 12, 2024. The City mailed notices to property owners within 1,000 feet of the site and known parties of interest; the notice was also posted on the City's website. This meeting was not required under the KMC. The applicant voluntarily hosted the meeting to help address concerns raised during public comment and provide information to the public. The meeting provided Kenmore residents with the opportunity to learn more about the project and ask questions of the applicant, the City, and other agencies including Ecology, USACE, and WDFW. The meeting was recorded and made publicly available on the City's website and YouTube channel.
- f. A SEPA MDNS was issued on 6/3/2024, concurrently with the shoreline decision. Mitigation measures required under SEPA are incorporated as conditions of approval. An analysis of the findings and rationale for conditions can be found in the SEPA MDNS (Attachment 17).

Pursuant to WAC 197-11-350(1), in making threshold determinations, an agency may consider mitigation measures that the agency or applicant will implement. The City is the lead agency for the SEPA determination and has determined that project meets the threshold criteria for a Mitigated Determination of Non-Significance (MDNS). The City has determined that the requirements for environmental analysis, protection, and mitigation measures have been adequately addressed in the development regulations and comprehensive plan adopted under

chapter 36.70A RCW, provided by RCW 43.21C.240 and WAC 197-11-158. An environmental impact statement (EIS) will not be required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other relevant information on file with the lead agency. This information is available to the public upon request at <https://www.kenmorewa.gov/government/transparency/public-records-requests> or by contacting the planner, Reilly Rosbotham.

CONCLUSION: The application exceeds the SEPA exemption thresholds. A SEPA Environmental Checklist was completed by the applicant and reviewed by the city (Attachment 9). Acting as the lead agency, the City reviewed the project for environmental impacts and issued an MDNS concurrent with the shoreline decision. The city provided public notification pursuant to KMC 19.25 and WAC 197-11-355. The City received 4 comments during the public comment period. Both the applicant and the city responded to public comments, and the applicant held a voluntary virtual public meeting.

SHORELINE EXEMPTION

The proposal is exempt from an SSDP pursuant to WAC 173-27-040(2)(b), which exempt:

“Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location, and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.”

Based on the application, the existing berthing area requires normal maintenance in order to prevent a decline from a lawfully established condition. A similar maintenance dredging action to a depth of +4.47 feet was permitted in 2004. Dredged material will be disposed of at an approved upland disposal site, a grab sample will be taken of the newly exposed sediment surface, operational best management practices (BMPs) will be used to minimize spillage and turbidity, and a water quality monitoring plan will be in place. The maintenance dredging action will not cause substantial adverse effects to shoreline resources or environment. This activity complies with WAC 173-27-040(2)(b) and is exempt from an SSDP.

CRITICAL AREA EXEMPTION

The proposal meets the critical area exemption criteria of KMC 18.55.150.B, which exempt:

“Operation, maintenance or repair of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems, that do not require construction permits, if the activity does not further alter or increase the impact to, or

encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair.”

Based on the application, the project is considered normal maintenance of the berthing area. After the maintenance dredging action, the berthing area will continue to be consistent with its legally established preexisting condition, and the activity will not further alter, increase the impact to, or encroach further within the critical areas or buffers. The proposal complies with KMC 18.55.150.B and is exempt from critical area requirements.

CONCLUSION

In accordance with the requirements of the DW and A shoreline environments, Washington Administrative Code Section 173-27-040(2)(g), and the general shoreline development standards in KMC 16.45, the SSDP and critical area exemptions are **approved with conditions:**

1. Shoreline exemptions do not exempt you from obtaining any other required local, state, and/or federal permits. Review for compliance with the provisions of the Kenmore Municipal Code (KMC) does not constitute compliance with other federal, State, and local regulations and permit requirements that may be required (for example, the Washington State Department of Fish and Wildlife hydraulic project approval (HPA), Army Corps of Engineers Section 404 permits, National Pollution Discharge Elimination System (NPDES) permits, etc). The applicant is responsible for complying with these requirements, apart from the process established within the City.
2. This application covers only the improvements applied for with this application. Incremental exemptions for activities that, in sum, would require a permit, is not acceptable.
3. All dredged material shall be disposed of at an approved upland site, pursuant to KMC 16.55.060.E.
4. All work shall comply with the applicable standards, including but not limited to the general shoreline development requirements found in KMC 16.45.010.
5. Appropriate erosion control measures and Best Management Practices (BMPs) shall be implemented during construction, as stated in the attached project narrative (Attachment 5, Page 4, Seaborn Pile Driving).
6. Conditions apply under the SEPA MDNS decision (file no. SEPA23-0027).

Please contact me via e-mail if you have any questions. Thank you.

Sincerely,

Reilly Rosbotham, Planner
rosbotham@kenmorewa.gov

Attachments: 1. City of Kenmore Shoreline Designation Map

2. City of Kenmore Critical Areas Map – Geologic Hazard Areas
3. City of Kenmore Critical Areas Map – Wetlands and Streams
4. KMC 16.45.010
5. Plan set (Anchor QEA)
6. Project Narrative (Glacier NW, 3/12/2024)
7. Combined Public Comments (Various Authors, 6/2024-7/2024)
8. Public Response Letter (Glacier NW, 3/21/2024)
9. SEPA Checklist (Glacier NW, 3/7/2024)
10. Water Quality Monitoring Plan (Anchor QEA, 3/2024)
11. NOA and SEPA Notice
12. NOA and SEPA Notice – Extended Comment Period
13. NOA Affidavit of Posting
14. NOA Affidavit of Service
15. Community Meeting Notice
16. Community Meeting Attendee List
17. SEPA MDNS – File no. SEPA23-0027

cc: File