



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

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February 10, 2014

Cape George Colony Club  
Attn: Mr Arthur R. Burke  
61 Cape George Way  
Port Townsend WA 98368-9403

RE: Water Quality Certification - Order #10397/Corps Public Notice # NWS-2013-108 --  
Dredging of up to 1,000 cy of sediment from the marina entrance channel for ten years, a  
one-time dredging of 1,000 cy of material from inside the marina, and experimental  
removal of 3,000 cy of material to form a catchbasin in Jefferson County, Washington

Dear Mr. Burke:

The above-referenced public notice for proposed work in waters of the state has been reviewed in accordance with all pertinent rules and regulations. On behalf of the State of Washington, we certify that the work proposed in the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This certification is subject to the conditions contained in the enclosed Order and may be appealed by following the procedures described in the Order.

If you have any questions concerning the content of this letter, please contact Helen Pressley at (360) 407-6076.

Sincerely,

Brenden McFarland, Section Manager  
Shorelands & Environmental Assistance Program  
Headquarters Office - Ecology  
State of Washington

by Certified Mail 7010 2780 0000 2503 3815

cc: Darren Habel - Corps  
Margie Schirato, WDFW

Mr. Arthur R. Burke  
#10397/Corps Public Notice # NWS-2013-108  
February 10, 2014

ecc: Loree' Randall, Ecology  
Helen Pressley, Ecology  
Laura Inouye, Ecology  
Jeffree Stewart, Ecology  
DMMP@dnr.wa.gov  
[Ecyrefedpermits@ecy.wa](mailto:Ecyrefedpermits@ecy.wa)

|                                    |   |   |
|------------------------------------|---|---|
| <b>IN THE MATTER OF GRANTING A</b> | ) | <b>ORDER #10397</b>                             |
| <b>WATER QUALITY</b>               | ) | <b>Corps Reference No. NWS-2013-108</b>         |
| <b>CERTIFICATION TO</b>            | ) | Dredging of up to 1,000 cy of sediment from the |
| <b>Cape George Colony Club</b>     | ) | marina entrance channel for ten years, dredging |
| in accordance with 33 U.S.C. 1341  | ) | of 1,000 cy of material from inside the marina, |
| (FWPCA § 401), RCW 90.48.120, RCW  | ) | and experimental removal of 3,000 cy of         |
| 90.48.260 and Chapter 173-201A WAC | ) | material to form a catch-basin in Jefferson     |
|                                    |   | County, Washington                              |

TO: Cape George Colony Club  
 Attn: Mr Arthur R. Burke  
 61 Cape George Way  
 Port Townsend WA 98368

On October 29, 2012 the Cape George Colony Club submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on July 22, 2013.

This project proposes to continue annual maintenance dredging of up to 1,000 cubic yards (cy) of material from within the marina, to perform a one-time dredge of up to 1,000 cy of material from within the marina, to dredge up to 3,000 cy of material from the north side of the channel for an experimental catch basin to reduce the need for annual channel dredging. All dredged material is proposed to be placed south of the marina channel waterward of the Mean Higher High Water mark (MHHW) on the beach to maintain sediment transport downdrift. In addition, the work includes placing additional rock, up to 438 cy, below the MHHW to raise the existing jetty to a uniform height.

The purpose of this project is to maintain adequate marina depths and to protect marina infrastructure.

**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:**

1. In this Order, the term "Applicant" shall mean the Cape George Colony Club and its agents, assignees and contractors.
2. All submittals required by this Order shall be sent to Ecology's Headquarters Office, Attn: Federal Permit Coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #10397 and Corps Reference # NWS-2013-108.
3. All notifications listed below shall be made via phone to Helen Pressley, 360-407-6076, or e-mail at hpre461@ecy.wa.gov. These notifications shall be identified with Order #10397 and include the Applicant's name, the project contact, and the contact's phone number.
  - a. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
  - b. Within at least seven (7) days after completion of the in-water work.
4. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on October 29, 2012, unless otherwise authorized by Ecology.

5. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
6. Within 30 days of receipt of the updated information, Ecology will determine if the revised project requires a new public notice and Certification or if a modification to this Order is required.
7. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual 404 and/or Section 10 permit for the project.
8. The Applicant shall send (per A.2.) a copy of the final Section 404 Corps permit to Ecology' Federal Project Manager within two weeks of receiving it from the Corps.
9. The Applicant shall keep copies of this Order 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.
10. Upon Ecology personnel's request, the Applicant shall provide access to the project site, all staging areas, and mitigation sites for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
11. 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. Furthermore, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified or if additional conditions are necessary to further protect water quality.
12. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48), or the federal Clean Water Act, Ecology will issue an administrative order to incorporate any such changes or amendments applicable to this project.
13. 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.
14. 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.

15. 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.

16. This Order will automatically transfer to a new owner or operator if:

- a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
- b. A copy of this Order is provided to the new owner or operator; and
- c. If Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.

**B. Water Quality Conditions:**

1. This order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i)(D).

The area of mixing established for marine waters is a 150 foot radius surrounding the in-water activity. Turbidity occurring outside that zone that is more than 5 nephelometric turbidity units (NTU) over background when the background is 50 NTU or less, or a 10% increase in turbidity when the background turbidity is more than 50 NTU is a violation of the turbidity water quality standard

**C. Water Quality Monitoring:**

1. The Applicant shall regularly monitor visually for turbidity at the point of compliance (150feet) surrounding the dredging activity.
  - Visible turbidity anywhere at 150 ft point of compliance from the activity and/or the disposal location shall be considered to be an exceedance of the standard.
  - The amount of the exceedance and the reason for the exceedance shall also be documented and reported. The permit coordinator shall be contacted within 24 hours if an exceedance occurs.
2. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator.

**D. Dredging and Disposal:**

1. All dredging is to be done using a land-based excavator and a front end loader conducted during extreme low tides. Additional material will be removed from two shoaled areas in the marina using a small hydraulic suction dredge. This will minimize the in-water activity done. **Any change in the use of the type of dredge requires preapproval from Ecology.**

2. Approximately 1,000 cy of material will be removed from the entrance channel and deposited down the littoral drift on an adjacent beach. Additional material will be removed from two areas within the marina that have shoaled and will be deposited in the south parking lot to dewater and then it will be deposited on the same beach. Dewatering runoff shall not enter waters of the state without treatment.
3. The Applicant proposes to perform a onetime dredge of up to 1,000 cy of material from within the marina, to dredge up to 3,000 cy of material from the north side channel as a experimental catch-basin to reduce the need for channel dredging. All material removed would be done during low tides. Material removed would be loaded into trucks and deposited on the same beach where the other sediment has been deposited.
  - A report shall be prepared and sent to Ecology that includes the proposed plan for the catch-basin, proposed monitoring, and after the test is concluded, an evaluation of the success of the catch-basin at preventing the entrance channel from filling with sediment.
4. Dredging operations shall be conducted in a manner that minimizes the disturbance or siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into waters of the State.
5. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
6. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
7. Prior to each dredging cycle, the Applicant shall contact the DMMP agencies to determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination has been issued. This area ranks exclusionary in potential for contamination and the recency determination extends until June 2020. Contact the DMMO for a possible extension on this permit if necessary.

**E. Timing Requirements:**

1. All in-water work shall be completed by the work window identified in the most current HPA issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.
2. This Order shall remain in effect for a period of 10 years from date of issuance. Continuing this project beyond the 10 year term of this Order will require separate certifications every 10 years.

**F. Notification Requirements:**

1. The Applicant shall provide notice to Ecology's 401/CZM Federal permit coordinator at least 7 days prior to the start of dredging each dredging season and within 14 days after completion of dredging each season. Notification should be made using all the information required in Condition A2.

**G. Emergency/Contingency Measures:**

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. 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 or operator shall immediately take the following actions:
  - a. Cease operations that are causing the compliance problem.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
  - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
  - e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events Ecology's 401/CZM Federal permit coordinator at (360) 407-6076.
  - f. 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.
3. 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, including wetlands.
4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology using the above phone numbers.

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

## CONTACT INFORMATION

Please direct all questions about this Order to:

Helen Pressley  
Department of Ecology  
Headquarters SEA Program  
PO Box 47600  
Olympia WA 98504-7600  
360-407-6076  
hpre461@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 34.05 RCW – Administrative Procedure Act**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>

**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 173-201A 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**

Dated this 10<sup>th</sup> day of February, 2014 at the Department of Ecology, Lacey Washington



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Brenden McFarland, Section Manager  
Shorelands & Environmental Assistance Program  
Headquarters Office – Ecology  
State of Washington

**ATTACHMENT A**

**Cape George Colony Club  
Maintenance Dredge  
Water Quality Certification Order #10397**

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

I have read and understand the conditions of Order #10397 Section 401 Water Quality Certification for the Cape George Colony Club Maintenance Dredge. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Company

\_\_\_\_\_  
Title

