



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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August 31, 2012

Jacquelyne Everett, Marina Manager
Point Roberts Resort LP, d.b.a. Point Roberts Marina
713 Simundson Drive
Point Roberts, WA 98281

RE: Water Quality Certification Order #9466 for Corps Reference #NWS-2000-617, for Point Roberts Marina Sediment Bypass Operation Project, Strait of Georgia at Point Roberts, Whatcom County, Washington

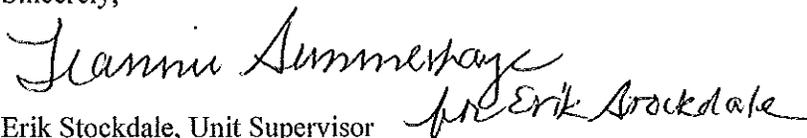
Dear Ms. Everett:

On July 20, 2012 the Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the above project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA 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, Unit Supervisor
Shorelands and Environmental Assistance Program

ES:rrp:cja

Enclosure

By certified mail: 7011 0470 0003 3720 9930

cc: Randel Perry, U.S. Army Corps of Engineers
Jeffrey Layton, Layton & Sell, Inc.
Doug Thompson, Washington Department of Fish and Wildlife

e-cc: Hugh Shipman – HQ
Loree' Randall – HQ
Raman Iyer – NWRO
ecyrefedpermits@ecy.wa.gov



IN THE MATTER OF GRANTING A) ORDER #9466
WATER QUALITY) Corps Reference #NWS-2000-617
CERTIFICATION TO) Point Roberts Marina Sediment Bypass
Point Roberts Resort LP,) Operation Project, Strait of Georgia at
d.b.a. Point Roberts Marina) Point Roberts, Whatcom 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: Point Roberts Resort LP, d.b.a. Point Roberts Marina
Attn: Jacquelyne Everett, Marina Manager
713 Simundson Drive
Point Roberts, WA 98281

On July 20, 2012, the Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) 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 on June 5, 2012.

In order to maintain the net westerly transport of sediments across the marina site, continuation of an annual sediment bypass operation for a period of 10 years is proposed at this site. During the fall of each year, approximately 3,000 to 7,500 cubic yards (with a maximum allowed volume of 10,000 cubic yards per year) of trapped littoral sediments would be transferred (bypassed) by land-based equipment from the east side of the marina's entrance channel to the west of the channel, where the material is deposited onto the beach in a feeder stockpile.

The project is located at 713 Simundson Drive, Point Roberts, Whatcom County, Washington, Section 10, T. 40 N., R. 3W.

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 Point Roberts Resort LP, d.b.a. Point Roberts Marina 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 #9466 and Corps Reference #NWS-2000-617.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 20, 2012. The Applicant must submit 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 404 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 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 a temporary turbidity exceedance beyond the limits established in WAC 173-201A-210(1)(e)(i) which allows a 150-foot temporary area of mixing for turbidity resulting from disturbance of in-water activities.
- B2. Turbidity shall be assessed and recorded during all excavation activity. Monitoring points shall be at 150-foot down current from the in-water activities and a background location that is at a point outside the area of influence of the in-water work. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable. Visible project-related turbidity at 150 feet from the discharge point is considered to be an exceedance of the standard. If an exceedance of 5NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a ten (10) percent increase in turbidity when the background turbidity is more than 50 NTU, occurs at 150 feet from the project site, activity causing the problem shall be modified and monitor shall continue. If exceedances occur with two (2) consecutive measurements, the activity causing the turbidity shall cease until the problem is resolved.

- B3. Reporting: If no exceedances are detected, results of water quality sampling shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- B4. 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 #9466, 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:**
- C1. 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. 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.
- C4. Use of equipment on the beach area shall be held to the absolute minimum necessary to achieve the sediment harvest and beach nourishment objectives.
- C5. All beach excavation and nourishment activities shall be conducted in the dry during periods of low tide in order to minimize impacts to water quality.
- C6. Beach sediment harvest shall be restricted to the two areas shown in the JARPA received by Ecology on July 20, 2012. Under no circumstances shall beach sediments be harvested outside of these approved areas.

- C7. Under no circumstances shall harvested beach sediments be placed waterward of the +5.1 tide elevation (MLLW = 0.00) at the approved beach nourishment reach.
- C8. Harvested beach sediments shall not be used to construct or maintain an artificial sediment berm along the identified beach nourishment reach landward of the +12.0 tide elevation.
- C9. Under no circumstances shall equipment be operated below the +5.1 tide elevation (MLLW= 0.00) at the approved beach nourishment reach.
- C10. The excavation operation and redistribution of sediments on to the adjacent feeder beach shoreline shall be conducted in a manner to minimize turbidity.
- C11. All trenches, depressions, or holes created in the intertidal area shall be backfilled prior to inundation by tidal waters.
- C12. Large woody debris requiring relocation during the dredging operation shall be moved eastward along the beach the minimum distance required to accommodate dredging activities. Large woody debris moved during the operation shall not be removed from the beach or stockpiled above the Ordinary High Water Mark.
- C13. 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.
- C14. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state.
- C15. Project activities shall be conducted to minimize siltation of the beach area and bed.
- C16. Eelgrass and kelp shall not be adversely impacted by sediment harvest or beach nourishment activities.
- C17. Trucks utilized for transportation of material to the beach nourishment site shall incorporate appropriate BMPs in order to prevent spillage of sediment-laden water into waters of the state.

D. Long-Term Project Monitoring Conditions:

- D1. An annual report shall be submitted to Ecology by March 1 of each year per Condition A2. The report shall include the following:
- a. Actual sediment volume moved.
 - b. Post-operation berm maintenance required.
 - c. Photo documentation of pre-operation, immediate post-operation, and 30-day post-operation conditions. A consistent photo-point shall be established for this purpose.

E. Emergency/Contingency Measures:

- E1. The Applicant shall develop and implement a Spill Prevention, Control and Countermeasures (SPCC) 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. This Order expires ten (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 season and within 14 days after completion of construction season. Notification, referencing Corps Reference #NWS-2000-617, Order #9466 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 all 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
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p> <p>Pollution Control Hearings Board 1111 Israel RD SW STE 301 Tumwater, WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>


Erik Stockdale, Unit Supervisor
Wetlands/401 Unit
Shorelands and Environmental Assistance Program
Northwest Regional Office

8/31/12
August 31, 2012

ATTACHMENT A

**Point Roberts Resort LP, Point Roberts Marina Sediment Bypass Operation Project
Water Quality Certification Order #9466**

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

I have read and understand the conditions of Order #9466 Section 401 Water Quality Certification for the Point Roberts Marina Sediment Bypass Operation 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