STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

July 15, 2011

Mr. David Stromme
Mariner's Cove Beach Club
PO Box 187
Oak Harbor WA 98277

RE: Water Quality Certification - Order #8632/Corps Project #NWS-2001-00570-NO, Maintenance dredging of a maximum of 4,820 cubic yards (cy) from the channel entrance to the Mariner's Cove moorage basin in Saratoga Passage, Puget Sound near Oak Harbor, Whidbey Island, Island County, Washington

Dear Mr. Stromme:

The above-referenced project 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

Enclosure
By Certified Mail 7009 1410 0002 4001 1538

cc: Randel Perry, Corps
Doug Thompson, WDFW
Stan Walsh, Skagit River System Cooperative
Lionel Klikoff, WDNR, lkli490@dnr.wa.gov
Rick Gliniak
Donald Reynolds
Robert Christopher
Dale Bickford
Mac and Elaine McDowell
Wendland Beezhold,

ecc: Loree' Randall, Ecology
Helen Pressley, Ecology
Laura Inouye, Ecology
David Pater, Ecology
ecyrefedpermits

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Mariner's Cove Beach Club in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER #8632** **Corps Reference No. NWS-2001-00570-NO** Maintenance dredging of a maximum of 4,820 cubic yards (cy) from the channel entrance to the Mariner's Cove moorage basin in Saratoga Passage, Puget Sound near Oak Harbor, Whidbey Island, Island County, Washington

TO: Mr. David Stromme
Mariner's Cove Beach Club
PO Box 187
Oak Harbor WA 98277

On August 10, 2010 the Mariner's Cove Beach Club submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. In response to the August 10, 2010 JARPA Ecology issued a public notice pursuant to the provisions of Chapter 173-225 WAC on June 1, 2011.

Work proposed involves maintenance dredging of a maximum of 820 cubic yards (cy) of sediment at the channel entrance to Mariner's Cove marina during the first year (from two areas at the channel) and a maximum of 800 cy every two years thereafter up to ten years for a total of 4,820 cy.

Dredging will be accomplished using a barge-mounted clamshell bucket with material stockpiled on a barge. The 895 square foot (sf) area inside the harbor entrance will be dredged to a depth of 1.0 feet Mean Lower Low Water (MLLW) to match the existing channel depth. In addition, a 7,980 sf area will be dredged to -2.0 feet and -3.0 feet MLLW.

The dredged materials will be transferred by barge, off-loaded by clamshell bucket, and placed as beach nourishment on the beach north of the marina channel entrance along the concrete bulkhead and above +7.0 feet MLLW. Disposal of dredged materials as beach nourishment will only occur when tidal elevations are sufficient to avoid grounding of equipment on eelgrass beds. In order to avoid an existing eelgrass bed (*Zostera marina and Z. japonica*), the inner margin of the eelgrass bed shall be marked with buoys and a 10 foot buffer will be provided between the inner eelgrass margin and the dredged area.

The purpose of this project is to provide adequate water depths for boats entering/leaving the manmade basin serving a shoreline residential community.

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, 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. For purposes of this Order, the term "Applicant" shall mean the Mariner's Cove Beach Club and its agents, assignees and contractors.

2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: 401/CZM Federal permit coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #8632 and Corps Reference # NWS-2001-00570-NO.

3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on August 10, 2010. The Applicant will be out of compliance with this Order and must submit an updated JARPA if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

4. 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.

5. 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.

6. 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.

7. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

8. 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.

9. 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.

10. 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.

11. 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:

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 water 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. Dredging and Disposal:

1. All dredging is to be done using a clamshell bucket. Use of any other type of dredge will require prior approval from Ecology.

2. All dredged material will be stockpiled on a barge, offloaded by clamshell bucket and placed as beach nourishment on a beach north of the marina channel entrance along the concrete bulkhead and above the +7.0 foot MLLW. Disposal of dredged materials as beach nourishment will only occur when tidal elevations are sufficient to avoid grounding of equipment on eelgrass beds. In order to avoid an existing eelgrass bed (*Zostera marina and Z. japonica*), the inner margin of the eelgrass bed shall be marked with buoys and a 10 foot buffer will be provided between the inner eelgrass margin and the dredged area.

3. All debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. Similar sized debris found floating in the dredging area shall also be removed.

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. A pre-dredge meeting is required to be convened prior to the start of dredging. A **Dredging Plan** is required and shall be submitted to Ecology to the 401/CZM Federal permit coordinator at the address shown in Condition A2 for review and approval 2 weeks prior to the pre-construction meeting.

8. Prior to each dredging cycle, the Applicant shall contact the PSDDA agencies to determine whether any sediment testing is required. If testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination has been issued. The current exclusionary determination extends until June, 2018. Contact the DMMO for a possible extension of up to 2 years.

D. Timing Requirements:

1. All in-water work shall be completed within 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.

E. 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.

F. 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.

G. Appeal Process:

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 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
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Rd SW STE 301 Tumwater, WA 98501	**Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Helen Pressley
Department of Ecology 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

Chapter 43.21B RCW - Environmental 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

Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington
www.ecy.wa.gov/biblio/wac173201A.html

DATED 7-15-11 at Olympia, Washington.

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

ATTACHMENT A

Mariner's Cove Beach Club
Maintenance Dredging Project
Water Quality Certification Order #8632

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #8632 Section 401 Water Quality Certification for the Mariner's Cove Beach Club Maintenance Dredging Project. 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