STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
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July 22, 2010

Mr. Gary Merlino
MJB Properties
9125 – 10th Ave S
Seattle WA 98108-4612

RE: Water Quality Certification - Order #7034/Corps Public Notice 2008-604 – Installation of commercial piers and a boat ramp and attendant facilities at the MJB South Dock site in Anacortes, Skagit County, Washington

Dear Mr. Merlino:

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,

Dani Rankell for

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

By certified mail 7009 1410 0002 4001 1309

cc: City of Anacortes
Ballenger Living Trust
Anacortes Marine Inc.
Cap Sante Marine Inc.
John and Constance Ripley
Anacortes Marina Owners Association
Slick Willy II LLC.
David Vagt, DNR
Andrea LaTier, USFWS

ecc: Loree' Randall, Ecology
Helen Pressley, Ecology
Laura Inouye, Ecology
Ecyrefedpermits
Bob Fritzen, Ecology
Sandra Caldwell, Ecology

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO MJB Properties in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER #7034** **Corps Reference No. NWS-2008-604-NO** Installation of commercial piers and a boat ramp with attendant facilities at the MJB South Dock site in Fidalgo Bay, Skagit County, Washington

TO: Mr. Gary Merlino
MJB Properties
9125 – 10th Ave
Seattle WA 98108-4612

On May 20, 2009 MJB Properties 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 May 12, 2009. An Ecology public notice was distributed on September 28, 2009.

Work involves installation of a 350 foot long by 14 foot wide grated floating moorage pier with a 80 foot long by 6 foot wide gangway; installation of 170 foot long by 36 foot wide boat ramp equipped with a self-propelled yacht transporter; installation of a 174 foot long by 6 foot wide pier and 30 foot long by 4 foot wide gangway adjacent to the boat ramp; and the installation of a total of 32 steel piling ranging from 12 to 24 inches to support piers, ramps, etc. Creating the slope for the boat ramp will require excavation of 1,800 cubic yards of material waterward of the mean higher high water (MHHW) and 4,200 cubic yards above MHHW. Proposed work also involves the relocation of an existing stormwater outfall and pad and repairs to an existing moveable steel pier. The latter involves installation of poured concrete along the landward support footing, placement of 30 cubic yards of rock for erosion protection, repair of 20 existing piling with poured in place concrete, and repairs to decking and other structural components of the pier.

The purpose of this work is to provide commercial moorage and boat launching facilities for local boat repair industries.

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 MJB Properties 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 #7034 and Corps Reference # NWS-2008-604-NO.

3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Protection Application (JARPA) received by Ecology on May 20, 2009. 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 the turbidity water quality standard beyond the limits established in WAC 173-201A-210(1)(e)(i)(D). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.

    - 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. Water Quality Monitoring

1. In-Water Construction Water Quality Sampling and Monitoring: A Water Quality Protection and Monitoring Plan (Plan) shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark of Fidalgo Bay.

   The Applicant shall submit the Plan for Ecology review and approval at least 20 days prior to the start of in-water work.

   The Plan shall include the following minimum requirements:

   a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the Plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-210(1)(e)(i), which allows a 150-foot temporary area of mixing for turbidity resulting from disturbance of in-place sediments in Fidalgo Bay, and a 100-foot warning point. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.

      Turbidity shall be monitored at 3 depths. Samples shall not be averaged across depth.

   b. Number of samples: Number and frequency of water quality samples to be taken.

   c. Parameters to be sampled: Turbidity and petroleum sheen shall be monitored for this project.

   d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual. Sheen will be noted via ongoing visual inspection.

   e. Early warning detection: If turbidity at the 100-foot warning point reaches 5 NTU over background or greater than 10% over background, the activity shall be altered in order to prevent an exceedance at the 150-foot point of compliance. If sheen is observed, absorbent pads, booms and other containment devices will be employed. Modification of dredge rate will be adjusted to allow containment of sheen.

   f. Detection of exceedances: Water quality standards for turbidity in "Extraordinary" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. The water quality parameter for

sheen is considered any noticeable persistent surface sheen. If exceedances of these standards at the point of compliance specified in WAC 173-201A-210(1)(e)(i)(D) are detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity and sheen exceedances.

g. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be forwarded to Ecology on a monthly basis.

h. Notification of exceedances: Notification of exceedances that are detected through water quality sampling and inspection shall be made to Ecology within 24 hours of occurrence. Notification shall be made to Helen Pressley by telephone at (360) 407-6076, or by fax to (360) 407-6902. 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.

2. 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 floating clamshell bucket or barge mounted excavator. Some dredging may be conducted by a tracked excavator working at low tide with transfer of material onto a barge or onto uplands. Use of any other type of dredge/excavator will require prior approval from Ecology.

2. Dredged material will be transported to the Elliott Bay nondispersive site using a bottom opening hopper barge, or deposited upland. The dewatering water from any sediment deposited upland shall be filtered prior to re-entering waters of the state. This dewatering water must be discharged directly to waters of the state after filtration and not allowed to

run overland. **Any** change in disposal method or location requires prior approval from Ecology.

3. 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.
4. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
5. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
6. 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.
7. Prior to each dredging cycle, the Applicant shall contact the DMMP agencies to determine whether additional sediment testing is required or if an up to 2 year extension can be granted. 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 moderate in potential for contamination and the earliest recency determination extends until April 2013.

E. General Construction Requirements:

1. Wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.
2. Construction stormwater, sediment, and erosion control best management practices (BMPs: e.g. geotextile fencing, drain filtration, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site. BMPs shall be regularly inspected and repaired as necessary.
3. Sediment and erosion control measures shall be inspected and maintained during construction.
4. Construction debris shall be stored upland of the ordinary high water mark so that it cannot enter the water or cause water quality degradation. All debris shall be properly disposed of on land.

5. Wash water containing oils, grease, sediment, or other hazardous materials resulting from washdown of equipment or working areas shall be contained for proper disposal and shall not be discharged into state waters or storm drains.
6. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project if required.

F. Work in Marine Waters:

1. The Applicant shall use tarps or other containment methods when cutting or drilling over water to prevent debris, sawdust, concrete rubble, and other materials from entering the water.

2. During project demolition or construction, a containment boom shall be placed around the perimeter of the work area to capture wood debris and other materials released into the waters as a result of construction activities. All accumulated debris shall be collected and disposed of upland at an approved disposal site. Absorbent pads shall be deployed should any sheen be observed.

3. Project activities shall be conducted to minimize siltation of the beach area and bed.

4. The Applicant shall operate the barge(s) and tug in deep water so as to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.

5. Barges shall not be allowed to ground-out during construction.

6. Intertidal work, including excavation, backfilling, and fill placement shall be completed in the dry whenever possible. Nearshore work will also require boom and silt curtain containment when accessed from either the shoreward or waterward side.

7. Short-term impacts to water quality shall be minimized during shoreline stabilization by careful placement of geotextile fabric, crushed rock, bedding and armor rock.

8. All contaminated wastewater generated by the project (e.g. wastewater generated from concrete pours or pressure washing) shall be contained and prevented from entering waters of the state without prior turbidity, pH, and/or toxic testing in order to ensure that state water quality standards are met. If testing indicates unsuitable levels of turbidity or contaminants, water shall be treated prior to discharge or disposed of offsite at an appropriate upland facility.

G. Pile Driving

1. The Applicant shall use new pilings made of steel.

2. The Applicant shall install piling and sheetpiling using a vibratory hammer

H. 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 5 years from date of issuance. Continuing this project beyond the 5 year term of this Order will require separate certifications every 5 years.

I. 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 construction and within 14 days after completion of construction or dredging at the project site. Notification shall be made at the beginning and end of every in-water work episode. Notification should be made using all the information required in Condition A2.

J 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.

K. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.

- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001 (2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.

- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Shorelands and Environmental Assistance Program
Attn: Helen Pressley
P.O. Box 47600
Olympia WA 98504-7600

For additional information visit the Environmental Hearings Office Website:
http://www.eho.wa.gov

To find laws and agency rules visit the Washington State Legislature Website:
http://www1.leg.wa.gov/CodeReviser

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED July 22, 2010 at Olympia, Washington.

For

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

ATTACHMENT A

MJB Properties
South Dock Boat Ramp
Water Quality Certification Order #7034

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #7034 Section 401 Water Quality Certification for the South Dock Boat Ramp. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

_____ _____
Signature Date

_____
Printed Name

_____
Title

_____
Company