



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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May 16, 2012

Hat Island Community, Inc.  
Attn: Mr. Charles E. Motson  
3616 Colby Ave PMB 335  
Everett WA 98201-4773

RE: Water Quality Certification - Order #8828/Corps Public Notice #NWS-2008-00796-NO  
Hat Island Marina Rehabilitation and Expansion, Possession Sound, Snohomish County,  
Washington .

Dear Mr. Motson:

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

Enclosure

by Certified Mail 7009 0820 0001 9056 0847



WQC Order# 8828

May 16, 2012

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cc: Olivia Romano, Corps  
Doug Thompson, WDFW  
Shane Phillips, Coast and Harbor Engineering

ecc: Loree' Randall, Ecology  
Helen Pressley, Ecology  
Laura Inouye, Ecology  
Patricia Lambert, NWRO Ecology  
DMMP@dnr.wa.gov  
[ecyrefedpermits@wa.gov](mailto:ecyrefedpermits@wa.gov)

**IN THE MATTER OF GRANTING A ) ORDER #8828**  
**WATER QUALITY ) Corps Reference No. NWS-2008-00796-NO**  
**CERTIFICATION TO ) Hat Island Marina Rehabilitation and Expansion,**  
**Hat Island Community Inc ) Possession Sound, Snohomish County,**  
in accordance with 33 U.S.C. 1341 ) Washington  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Hat Island Community, Inc.  
Attn: Mr. Charles E. Motson  
3616 Colby Ave PMB 335  
Everett WA 98201

On October 27, 2010 the Hat Island Community 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 18, 2011.

The project includes:

- Maintenance dredging of up to 1,200 cubic yards (cy) of material from the existing boat basin and entrance channel. 1,000 cy of the dredged material shall be disposed of at the Port Gardner open water disposal site and 200 cy at an upland location on Hat Island.
- Additional upland excavation in the amount of 55,900 cy of upland material for the expansion of the marine facility will be disposed of upland. The excavation would be conducted in the dry by leaving an earthen berm in place to separate the new basin from the existing boat basin.
- The repair and/or replacement of the entrance breakwater, the north breakwater, west bulkhead, north bulkhead, and existing boat ramp;
- And placement of up to 7,500 cy bedding stone, armor stone, and riprap below the Mean Higher High Water (MHHW) line.

Repair and replacement of existing breakwater structures includes:

- The removal of about 75 linear feet of the existing creosote-treated timber breakwater at the marina entrance and installation of 115 linear feet of new steel sheet pile wall structure. The remaining existing timber breakwater structures would have armor stone installed on both sides for stabilization and for transition to the existing rubble-mound breakwater structures.
- Repositioning of existing dislodged stones or the replacement of missing stones from an existing rubble-mound breakwater located along the north perimeter of the marina.

- The existing creosote treated timber pile bulkhead along the west shoreline of the marina basin is deteriorated and is critical to the protection of upland buildings. About 2 feet of the upper vertical timber piles and upper two timber lagging boards would be removed (down to about 1 foot above MHHW) and an upper intertidal habitat bench would be created and a new rock wall would be installed.
- The existing 50 foot long failed concrete ecology block bulkhead located on the northwest edge of the boat basin would be removed and replaced with a rock wall along the same footprint.
- An existing deteriorated boat ramp would be replaced. The new boat ramp would be constructed at a similar position along the expanded marina south shoreline.
- A boat ramp, bulkhead, 40 new small craft slips (26 to 50 feet in length), and new passenger-only ferry slip would be constructed in the marina expansion area.
- The floating docks consist of 8-foot wide walkways, 4-foot wide finger floats, and boarding floats with thirty-three 12.75 -inch diameter steel support piles. The new floats would cover a total of 6,480 square feet. Two new berthing dolphins would be installed as part of the ferry slip. All new piles would be driven with a vibratory hammer.
- The existing south breakwater would be extended south for a distance of 250 feet and would be constructed of stacked armor stone placed on top of bedding stone and geotextile fabric. A 5-foot wide habitat bench would be incorporated into the inside bottom slope edge near the MLLW elevation. A habitat bench would be incorporated into the marina interior west and south shorelines.

The purpose of this project is to improve the marina to provide safe and reliable infrastructure for the community and to accommodate an increase in vessel traffic.

#### **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. For purposes of this Order, the term "Applicant" shall mean the Hat Island Community Inc. 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 #8828 and Corps Reference # NWS-2008-00796.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on October 27, 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).
  - 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.
  - Visible turbidity anywhere at 150 ft point of compliance from the disposal location shall be considered to be an exceedance of the standard.

**C. Water Quality Monitoring:**

1. The Applicant shall submit a water quality monitoring plan to Ecology per Condition A2 at least 7 days prior to dredging. This plan shall be approved by Ecology prior to any in-water work. The plan shall include at a minimum the following information:
  - a. Name and contact information of the person or firm responsible for monitoring;
  - b. Map of sample locations including background, early warning of 100 feet and point of compliance of 150 feet at or near the surface, midway, and bottom depths. For this project the point of compliance is a radius of 150 feet from the activity causing the turbidity. Averaging of samples across water depths is not allowed.
  - c. Parameter(s) to be monitored: turbidity;
  - d. Sample method;
  - e. Frequency, and
  - f. Steps to be taken if monitoring results indicate an exceedance has occurred. The amount of the exceedance and the reason for the exceedance shall also be reported.
2. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator at the address in Condition A2. The permit coordinator shall be contacted within 24 hours if an exceedance occurs. A sample reporting form is attached to this certification as Attachment B.

**D. Dredging and Disposal:**

1. All dredging is to be done using a barge-mounted clamshell bucket or excavator. **Use of any other type of dredge requires preapproval from Ecology.**
2. No more than 1,000 cy of material dredged from the entrance channel will be transported via hopper barge to the DMMP Port Gardner in-water disposal site. The remainder of the excavated material will be disposed of upland on Hat Island. **Use of any other type of disposal method or location requires preapproval by Ecology.**
3. For material being taken to open water disposal sites, 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 or disposal 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 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.

**E. In-Water Repair and Construction:**

1. All work shall be done so as to minimize turbidity, erosion, and other water quality impacts.
2. Construction, stormwater, sediment, and erosion control Best Management Practices (BMPs) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
3. Sediment and erosion control measures shall be inspected and maintained prior to and throughout the life of the project. BMPs such as silt fences shall be removed at the end of the project once they are no longer necessary.
4. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination of surface water.
5. The project area shall be clearly staked prior to construction. Clearing limits, travel corridors, and stockpile sites shall be clearly marked. Equipment shall enter and operate only within the marked corridors and stockpile areas.
6. Where practicable, machinery and equipment used during construction shall use biodegradable hydraulic fluid and shall be serviced, fueled and maintained upland away from water.

**F. Upland Excavation:**

1. The project shall obtain and comply with the conditions of the current Construction Stormwater General Permit (national Pollutant Discharge Elimination System – NPDES) issued for this project.
2. Sediment to be excavated from the upland area to become part of the marina shall be trucked upland to an approved area for disposal.
3. Runoff from the upland area is not allowed to be discharged into waters of the state before it is treated.
4. A berm shall be used to protect the area being excavated from early inundation. This berm shall be protected from erosion by the use of a silt curtain. The silt curtain shall be designed to prevent accumulated silt from entering the marina once the berm is removed as inundation occurs.

5. Inundation shall be done at slack tide.
6. All concrete shall be cured before it comes into contact with waters of the state.

**G. 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.

**H. 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 or dredging and within 14 days after completion of construction or dredging at the project site have been completed. Notification should be made using all the information required in Condition A2.

**I. 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.

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

*[Do not activate the links. Delete RCW/WAC reference if not included in this Order. Do not delete 43.21B/371-08]*

**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 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)

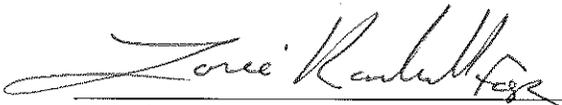
**Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173200.html](http://www.ecy.wa.gov/biblio/wac173200.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)

DATED: May 16, 2012 at Olympia, Washington.



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

**ATTACHMENT A**

**Hat Island Community Inc.  
Maintenance dredge, repairs, and upland excavation for marina expansion  
Water Quality Certification Order #8828**

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

I have read and understand the conditions of Order #8828 Section 401 Water Quality Certification for the Hat Island 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