



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 2, 2012

Mike Bumstead
2033 Southeast 416th Street
Enumclaw, WA 98022

Steve Bumstead
560 East South Temple, #301
Salt Lake City, Utah 84102-1174

RE: Water Quality Certification Order #9433 for Corps Reference #NWS-2012-101, for Bumstead Beach Nourishment Project, Lopez Sound at Lopez Island, San Juan County, Washington

Dear Mr. Bumstead:

On June 26th, 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,


Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program

ES:rrp:cja

Enclosure

By certified mail: 7011 0470 0003 3720 9855 (Mike Bumstead)
By certified mail: 7011 0470 0003 3720 9862 (Steve Bumstead)

cc: Susan Powell, U.S. Army Corps of Engineers
Jeffrey Layton, Layton & Sell, Inc.
e-cc: Bob Fritzen – NWRO
Hugh Shipman – HQ
Brenda Werden, Washington Department of Natural Resources
Brian Williams, Washington Department of Fish and Wildlife
ecyrefedpermits@ecy.wa.gov



IN THE MATTER OF GRANTING A) **ORDER #9433**
WATER QUALITY) **Corps Reference #NWS-2012-101**
CERTIFICATION TO) Bumstead Beach Nourishment Project, Lopez
Mike and Steve Bumstead) Sound at Lopez Island, San Juan 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: Mike Bumstead
20033 Southeast 416th Street
Enumclaw, WA 98022

Steve Bumstead
560 East South Temple, #301
Salt Lake City, Utah 84102-1174

On June 26, 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 February 24, 2012.

The project is to improve the substrate of the existing beach for forage fish habitat by removing approximately 350 cubic yards of existing quarry spalls; spread approximately 1,300 cubic yards of imported sand and gravel over 1.15 acres of intertidal beach; and replenish the initial beach nourishment with approximately 420 cubic yards of imported sand and gravel every 3 years for 10 years. The proposed beach materials will be spread evenly with an average depth of 8 to 9 inches using a small tracked vehicle. All work will occur during low tide conditions.

The project is located at 2475 and 2597 Lopez Sound Road, Lopez Island, San Juan County, Washington, , Section 25, 30, T. 35 N., R. 1W, 2W.

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 Mike and Steve Bumstead 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 #9433 and Corps Reference #NWS-2012-101.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 26, 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 at a minimum of every four (4) hours during periods of active in-water work. 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 have 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, modify the activity causing the problem and continue to monitor every four (4) hours during day light hours. If exceedances occur with two (2) consecutive measurements (four (4) hours apart), stop the activity causing the turbidity 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 #9433, 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 shall be held to a minimum, confined to a single access point, and limited to a 25-foot work corridor waterward of the existing rock bulkhead toe. Construction materials shall not touch the beach outside this 25-foot work corridor.
- C5. 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.

- C6. 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.
- C7. Project activities shall be conducted to minimize siltation of the beach area and bed.
- C8. If a barge is used to deliver construction materials and equipment to the project site, grounding of the barge shall be held to a minimum and confined to a single grounding location.

D. Long-Term Project Monitoring Conditions:

- D1. Beach monitoring shall be conducted to address monitoring of the beach for stability of the nourishment sediment, quantification and understanding of accretion and erosion trends in the study area, and suitability of the study area for forage fish spawning according to the *Site Enhancement Recommendations: Technical Memorandum for East Lopez Island Beach Nourishment Plan and Monitoring Plan, Revised*, to Layton and Sell Inc., Steve and Mike Bumstead, from Jim Johannessen, Coastal Geologic Services Inc., dated January 20, 2011, pages 13-15.

Monitoring shall include the following minimum requirements:

- a. Pre-Restoration Survey: A survey documenting baseline conditions, conducted immediately prior to the restoration.
 - b. As-Built Report and Drawings: A report documenting the final design of the beach enhancement project area, when site construction is completed.
 - c. Monitoring: Monitoring to ensure that the project performance standards are met, annually for at least six (6) years, after which monitoring shall occur every third (3rd) year.
- D2. The project monitoring period shall commence with Ecology's acceptance of the As-Built Report.
 - D3. Two (2) copies of each of the following shall be submitted to Ecology per Condition A2:
 - a. Pre-Restoration Survey.
 - b. As-Built Report and Drawings, sent to Ecology within 60 days of completing construction.
 - c. All Monitoring Reports.

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-2012-101, Order #9433 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).

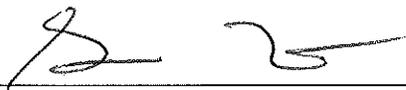
To appeal you must do all of the following within 30 days of the date of receipt of this Order:

- 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.

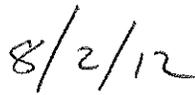
You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

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>



Geoff Tallent
Shorelands and Environmental Assistance Program
Northwest Regional Office



August 2, 2012

ATTACHMENT A

**Bumstead Beach Nourishment Project
Water Quality Certification Order #9433**

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

I have read and understand the conditions of Order #9433 Section 401 Water Quality Certification for the Bumstead Beach Nourishment 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