



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000  
October 13, 2006

**REGISTERED MAIL**  
**RB 670 437 925 US**

Alan and Laurel Back  
15908 NE 95<sup>th</sup> Way  
Redmond, WA 98052

**REGISTERED MAIL**  
**RB 670 437 939 US**

Nigel Thomson  
2007 Samish Crest Way  
Bellingham, WA 98229

Dear Mr. and Mrs. Back and Mr. Thomson:

**RE: Water Quality Certification Order #3843 for U.S. Army Corps of Engineers (Corps) Reference #200500082 to construct a pier, ramp and float for a joint use residential facility in Mosquito Pass on Henry Island, San Juan County, Washington.**

On May 5, 2006, you submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act (CWA) for the proposed joint use facility to provide boat moorage and waterfront access. The project proposes to construct a pier, ramp and float using steel piles. The U.S. Army Corps of Engineers issued a joint public notice for an individual Section 404 and Section 10 Permit on April 20, 2006, for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA and the April 20, 2006, public notice 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.

Alan and Laurel Back  
Nigel Thomson  
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On April 24, 2006, Alan & Laurel Back and Nigel & Linda Thomson submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Back and Thomson's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the Back and Thomson's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

This letter also serves as the State response to the Corps of Engineers' April 20, 2006, Public Notice.

If you have any questions, please contact Rebekah Padgett at 425-649-7129, [rp461@ecy.wa.gov](mailto:rp461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

GT:rrp:cja

Enclosure

cc: Rozwin Liera, U.S. Army Corps of Engineers  
Stephanie Johnson O'Day  
Brian Williams, Washington Department of Fish and Wildlife

e-cc: Penny Keys – HQ  
Loree' Randall – HQ  
Bob Fritzen, Ecology

**IN THE MATTER OF GRANTING A ) ORDER #3843**  
**WATER QUALITY ) Corps Reference No. 200500082**  
**CERTIFICATION TO ) Residential joint use dock, Henry Island,**  
**Alan and Laurel Back and ) Mosquito Pass, San Juan County, Washington.**  
**Nigel Thomson )**  
 in accordance with 33 U.S.C. 1341 )  
 (FWPCA § 401), RCW 90.48.120, RCW )  
 90.48.260 and Chapter 173-201A WAC )

TO: Alan and Laurel Back  
 15908 NE 95<sup>th</sup> Way  
 Redmond, WA 98052

Nigel Thomson  
 2007 Samish Crest Way  
 Bellingham, WA 98229

A joint public notice was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on April 20, 2006. On May 5, 2006, Alan and Laurel Back and Nigel Thomson, submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification.

The proposed project entails: constructing a fixed 160-foot-long walkway pier supported by 8 steel piles, and a 40-foot-long gangway ramp and a 50-foot-long single floating dock with 3 other steel piles. The pier and gangway will both be constructed using light-penetrating grating, and the widths will be 6 feet and 4 feet, respectively. The floating dock will be only 6.25 feet wide, constructed out of ACZA treated wood. The project is located in Mosquito Pass on the east shoreline of Henry Island, San Juan County, Washington, Section 22, Township 36 North, Range 4 West, WRIA #2.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, 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 not violate 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 Alan and Laurel Back and Nigel Thomson; and their 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 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #3843 and Corps Reference #200500082.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 5, 2006. The Applicant will be out of compliance with this Order and must reapply with 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 Corps does not issue Section 404 and Section 10 permits.

- A6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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.
- A11. 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.
- A12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

**B. Water Quality Conditions:**

- B1. Mosquito Pass is classified as Class AA and the criteria of that class apply except as specifically modified by this Order. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless

otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

B2. Turbidity shall be visually assessed and recorded at a minimum of every four (4) hours during periods of active in-water work. Monitoring points shall be 150 feet from the discharge point. 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 5 NTU 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, the Applicant shall modify the activity causing the problem and continue to monitor every four (4) 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. Project activities shall be conducted to minimize siltation of the beach area and seabed.

**C. Project Mitigation Conditions for Waters of the State:**

C1. Potential impacts to eelgrass from the proposed pier, ramp, and float shall be mitigated through measures described in the following document, except as modified by this Certification and Order, and including any approved revisions:

a. *Henry Island Joint-use Dock Mitigation Plan*, dated December 2004, prepared by Fairbanks Environmental Services.

C2. The Applicant shall avoid impacts to eelgrass beds during construction. Placement of derrick anchors (or spuds) in areas designated as eelgrass beds is prohibited.

C3. Eelgrass beds shall not be shaded for a continuous period of longer than four (4) days. Any portion of the eelgrass bed shaded for four (4) consecutive days shall receive, at a minimum, three (3) consecutive days of uninterrupted natural light.

C4. Prior to initiating construction activities, a qualified consultant shall mark the edge of the eelgrass habitat with temporary buoys within the barge work corridors.

C5. In areas with kelp, eelgrass, or macroalgae populations, vessel operation shall be conducted so as to prevent propeller-related damage to vegetation.

- C6. Barges or other work vessels shall be restricted to tidal elevations adequate to prevent grounding of the barge or vessel.
- C7. The Applicant shall submit two (2) copies of the following reports to Ecology within one (1) month following the date data was last collected during that reporting period:
- a. Pre-construction baseline eelgrass surveys;
  - b. Post-construction eelgrass surveys, conducted at the same time of year as the pre-construction baseline eelgrass survey;

The eelgrass/macroalgae habitat surveys shall be conducted per standard Washington Department of Fish and Wildlife (WDFW) guidelines unless alterations prepared by a qualified biologist are reviewed and approved by Ecology.

- C8. If eelgrass beds are found to be damaged after construction, a Pier, Ramp, and/or Float Structure Modification Plan shall be developed and implemented, subject to review and approval by Ecology. Two (2) copies of the Plan shall be submitted to Ecology within 90 days of completion of the post-construction eelgrass surveys.

If modifications of the pier, ramp, and/or float structures do not mitigate the observed impacts to the eelgrass habitat, an Eelgrass Planting and Monitoring Plan shall be developed and implemented, subject to review and approval by Ecology. Two (2) copies of the Plan shall be submitted to Ecology within 90 days of completion of the post-construction eelgrass surveys. The Eelgrass Planting and Monitoring Plan will stipulate at least ten (10) years of monitoring of planted eelgrass.

- C9. If the Applicant fails to comply fully with the mitigation specifications outlined above, the Applicant shall remove the pier, ramp, and float structures.

**D. Conditions for In-Water and Over-Water Construction Activities:**

**General Conditions:**

- D1. Construction stormwater, sediment, and erosion control 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.
- D2. Work shall be accomplished per the *Henry Island Joint-use Dock Biological Evaluation*, dated January 2005, prepared by Fairbanks Environmental Services, except as modified by this Order.

- D3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D4. 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.
- D5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.

**Work in Marine Waters:**

- D6. All manmade debris that has been deposited on the beach within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Abandoned concrete pipes, miscellaneous concrete slabs, and angular rocks in the construction work corridor that have washed into intertidal areas shall be removed from the beach.
- D7. Forms used for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout into waters of the state. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms if it will come into contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.

**Pile Driving:**

- D8. All new pilings shall be steel or concrete.
- D9. For steel piles 10 inches in diameter or less, the Applicant shall place a 6-inch-thick wood block between the piling and the impact hammer and employ a bubble curtain around the pile during pile driving operations.
- D10. For steel piles greater than 10 inches in diameter, the Applicant shall place a 6-inch-thick wood block, or thicker, between the piling and the impact hammer and employ a bubble curtain around the pile during pile driving operations.

**E. Emergency/Contingency Measures**

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project. This Plan shall be submitted to Ecology for review 30 days prior to beginning construction.

- 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 is valid until all compliance requirements in this document have been met.
- F2. In-water work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

**G. Reporting and Notification Requirement Conditions**

- G1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #200500082, Order #3843, can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

**H. Appeal Process**

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board  
4224 - 6th Avenue SE, Rowe Six, Bldg. 2  
P.O. Box 40903  
Lacey, Washington 98504-0903

Your appeal must also be served on:

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

In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

*For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>*

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 October 13, 2006 at Bellevue, Washington.



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Geoff Tallent, Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington

**ATTACHMENT A**

**Alan & Laurel Back and Nigel Thomson  
PIER, RAMP AND FLOAT CONSTRUCTION PROJECT  
Water Quality Certification Order #3843**

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

I have read and understand the conditions of Order #3843 Section 401 Water Quality Certification for the Alan and Laurel Back and Nigel Thomson Pier, Ramp and Float Construction Project. I have also read and understand all permits, plans, documents, and approvals associated with the Alan and Laurel Back and Nigel Thomson Pier, Ramp and Float Construction Project referenced in this Order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company