



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 670 437 956 US

Charles Barbo
508 McGillvoy Blvd. E.
Seattle, WA 98112

REGISTERED MAIL

RB 670 437 960 US

Lisa Kittilseby
508 McGillvoy Blvd. E.
Seattle, WA 98112

REGISTERED MAIL

RB 670 437 973 US

William Jr. and Patricia Sherman
3018 W. Lake Sammamish Pkwy. NE
Redmond, WA 98052

**RE: Water Quality Certification Order #3890 for U.S. Army Corps of Engineers (Corps)
Reference #200501433 to Placement of Fill for a Beach Enhancement Project in
Mosquito Pass on San Juan Island, San Juan County, Washington.**

Dear Mr. Barbo, Ms. Kittilseby, and Mr. and Ms. Sherman, Jr.:

On July 18, 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 beach enhancement project. The project proposes to excavate up to 1.25 feet between elevation +2 feet and +4 feet Mean Lower Low Water (MLLW), place 365 cubic yards of sand and fine gravel below Mean Higher High Water (MHHW) and 135 cubic yards of sand and fine gravel above MHHW to reduce bank erosion and provide recreational beach and potential surf smelt spawning habitat, and planting of native dunegrass shoots along the upper beach. The U.S. Army Corps of Engineers issued a joint public notice for an individual Section 404 and Section 10 Permit on July 5, 2006, for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the July 18, 2006 JARPA and the July 5, 2006, public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean

Charles Barbo
Lisa Kittilsey
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Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

On September 25, 2006, Charles Barbo, Lisa Kittilsey, and William Jr. & Patricia Sherman 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 Barbo, Kittilsey, and Sherman's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the Barbo, Kittilsey, and Sherman'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' July 5, 2006, Public Notice.

If you have any questions, please contact Rebekah Padgett at 425-649-7129, 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
Jim Johannessen, Coastal Geologic Services Inc.
Laura Arber, Washington Department of Fish and Wildlife

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

IN THE MATTER OF GRANTING A)	ORDER #3890
WATER QUALITY)	Corps Reference No. 200501433
CERTIFICATION TO)	Beach enhancement, San Juan Island, Mosquito
Charles Barbo, Lisa Kittilseby, and)	Pass, San Juan County, Washington.
William Jr. & Patricia Sherman)	
in accordance with 33 U.S.C. 1341)	
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	

TO: Charles Barbo
508 McGillvoy Blvd. E.
Seattle, WA 98112

Lisa Kittilseby
508 McGillvoy Blvd. E.
Seattle, WA 98112

William Jr. and Patricia Sherman
3018 W. Lake Sammamish Pkwy. NE
Redmond, WA 98052

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 July 5, 2006. On July 18, 2006, Charles Barbo, Lisa Kittilseby, and William Jr. and Patricia Sherman, 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: excavating up to 1.25 feet between elevation +2 feet and +4 feet Mean Lower Low Water (MLLW), placing 365 cubic yards of sand and fine gravel below Mean Higher High Water (MHHW) and 135 cubic yards of sand and fine gravel above MHHW to reduce bank erosion and provide recreational beach and potential surf smelt spawning habitat, and planting of native dune grass shoots along the upper beach. The project fronts four adjacent properties on the west shoreline of San Juan Island, Mosquito Pass, San Juan County, Washington, Section 23, 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 Charles Barbo, Lisa Kittilseby, and William Jr. and Patricia Sherman, 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 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #3890 and Corps Reference #200501433.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 18, 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. 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).
- B2. Project activities shall be conducted to minimize siltation of the beach area and seabed.

C. Project Mitigation Conditions for Waters of the State:

- C1. In areas with kelp, eelgrass, or macroalgae populations, vessel operation shall be conducted so as to prevent propeller-related damage to vegetation.
- C2. Barges or other work vessels shall be restricted to tidal elevations adequate to prevent grounding of the barge or vessel.

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 *San Juan Island Beach Nourishment Biological Evaluation*, dated July 2005, prepared by Fairbanks Environmental Services, and the *Beach Enhancement Design*, dated April 4, 2005, prepared by Coastal Geologic Services, Inc., 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.

- D6. The Applicant shall not conduct work when the material placement area is inundated by tidal waters.

Work in Marine Waters:

- D7. The Applicant shall implement BMPs to prevent and minimize spillage of sand and gravel off the conveyor belt during delivery onto the upper beach.
- D8. 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.

E. Long-Term Project Monitoring Conditions:

- E1. 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 shall be conducted per the *Beach Monitoring Plan for Barbo, Kittlesby & Sherman Beach Enhancement Project* (hereafter referred to as the "Monitoring Plan"), dated August 29, 2006, prepared by Coastal Geologic Services, Inc., except as modified by this Order.

Monitoring will include the following:

- a. Pre-Restoration Survey: Two copies of a survey documenting baseline conditions shall be conducted immediately prior to the restoration and submitted to Ecology per Condition A2.
- b. Record Report and Drawings: A report documenting the final design of the beach enhancement project area shall be prepared when site construction is completed. Two copies of the Record Report shall be sent to Ecology per Condition A2 within 60 days of completing construction, and in no case later than December 15, 2007, unless approval is obtained in advance from Ecology. The project monitoring period shall commence with Ecology's acceptance of the Record Report.
- c. Monitoring: Monitoring to ensure that the project performance standards are met shall be performed as described in the Monitoring Plan over a period of five (5) years. Two (2) copies of all monitoring reports shall be submitted to Ecology per Condition A2.

F. Emergency/Contingency Measures:

- F1. 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.
- F2. 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.
- F3. 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.
- F4. 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.

G. Timing Requirements

- G1. This Order is valid until all compliance requirements in this document have been met.

- G2. 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.

H. Reporting and Notification Requirement Conditions

- H1. 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 #200501433, Order #3890, can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

I. 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.



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

ATTACHMENT A

**CHARLES BARBO, LISA KITTILSEBY, AND WILLIAM JR. & PATRICIA SHERMAN
BEACH ENHANCEMENT PROJECT
Water Quality Certification Order #3890**

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

I have read and understand the conditions of Order #3890 Section 401 Water Quality Certification for the Charles Barbo, Lisa Kittilseby, and William Jr. and Patricia Sherman Beach Enhancement Project. I have also read and understand all permits, plans, documents, and approvals associated with the Charles Barbo, Lisa Kittilseby, and William Jr. and Patricia Sherman Beach Enhancement Project referenced in this Order.

Signature

Date

Title

Company